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OIL & GAS LAWS OF TEXAS

1921 EDITION

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Texas. Laws, statutes, etc. Mining law.

OIL AND GAS LAWS

—OF—

TEXAS

1921 EDITION

OIL AND GAS RIGHTS

—IN—

STATE LANDS

—BY—

GRAHAM B. SMEDLEY

Of the Austin Bar.

OIL & GAS LEGAL SERVICE
MARTIN STATIONERY COMPANY
Dallas Texas
1921

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FOREWORD

The reception extended the 1919 edition of this work was gratifying. The preparation of the present edition was postponed in order to include such legislation as might be passed by the Thirty-seventh Legislature.

The present edition includes a number of additional laws. The Validating Act of the Thirty-sixth Legislature is not as broad as anticipated and as shown by the paper of Mr. Smedley the provisions of the laws then in force may apply.

The paper of Mr. Smedley will be appreciated, as his studious research makes plain the many apparent conflicting statutes and opinions.

For convenience, the chronological order of the laws is continued.

The Conservation Law and the Pipe-Line Law are followed respectively by the Rules of the Railroad Commission.

We trust that this edition will prove of as great service as our other publications.

FEB 1 1922

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OIL AND GAS RIGHTS
In
STATE LANDS

GRAHAM B. SMEDLEY

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Oil and Gas Rights in State Lands

I. LANDS SUBJECT TO PROSPECTING.

Generally speaking, the lands, or areas, upon which rights to oil and gas may be acquired from the State, are Public School, University and Asylum Land, whether surveyed or unsurveyed, belonging to the State; fresh water lakes, river beds and channels, bays, inlets, marshes, reefs and salt water lakes, belonging to the State, and all lands heretofore or hereafter sold or disposed of by the State with reservation of the minerals. These are the different lands and areas as defined in the several laws on the subject; but by this general language a number of interesting and practical questions are suggested. Perhaps the most interesting of these is the question: What are the lands in which the State has reserved the minerals, or owns an interest in the minerals? There arise also such questions as: What river beds belong to the State? Where is the line between public and private ownership along the shore? What changes have been made by recent legislation in State ownership and control of oil and gas rights?

(1) THE LANDS IN WHICH THE STATE HAS RESERVED THE MINERALS.

The history of this subject is written in the opinions of the Supreme Court in the following cases: Cox vs. Robison (105 Texas 426, 150 S .W. 1149); Cowan vs. Hardeman (26 Texas 217); Schendell vs. Rogan (94 Texas 585, 63 S. W. 1001); Colquitt-Tigner Mining Company vs. Terrell (95 Texas 452, 68 S. W. 154); Greene vs. Robison (109

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Texas 367, 210 S. W. 498). The Cox case is mentioned first, because its opinion contains a most careful and complete discussion by Judge Phillips of the history and policy of Texas as to the disposition of minerals, beginning with the days of Mexican sovereignty and coming down through the time of the Republic to a comparatively recent date, and shows the various times when the State has, by Constitutional provisions and by Legislative Acts, released to the owners of land all minerals in them.

It is interesting to observe, as shown in the opinion in the Cox case, that, by the Mexican law and under the Republic through the adoption of the policy of the Mexican law and by express statutory enactment, all mines and minerals were reserved to the sovereign, and that minerals did not pass by the ordinary grant of land without express words of designation. The State, however, adopted and declared a different policy when, first in the Constitution of 1866, again in the Constitution of 1869, again in the Constitution of 1876, again in the Revised Statutes of 1879, and again in the Revised Statutes of 1895, it released "to the owner or owners of the soil all mines and mineral substances that may be on the same." (See Constitution of 1866, Section 39, Article VII; Constitution of 1869, Section 9, Article X; Constitution of 1876, Section 7, Article XIV; R. S. 1879, Article 3800; R. S. 1895 (Article 4041.) The same policy was continued, but in modified form, when the State, by the Act approved July 31, 1919 (Acts Thirty-sixth Legislature, Second Called Session, page 249), released, upon certain conditions, to the owners of the soil an undivided fifteen-sixteenths of all oil and gas upon and within the surveyed free school and asylum land and portions of such surveys that had theretofore or might thereafter be sold with mineral reservation.

The Constitutional provisions, and the Articles of the Revised Statutes of 1879 and 1895, above referred to, were not partial or conditional releases like the Act of 1919, nor were they limited to oil and gas, but they were full and unconditional releases of all the minerals in the land. They did not have both a prospective and retrospective effect as does the Act of 1919, but they had a retrospective effect only, and each was adopted or enacted to affect the lands ac-

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quired from the State during the period immediately preceding its adoption or enactment. The question directly before the Court in the Cox case was whether the section of the Constitution of 1876, releasing the minerals, operated prospectively as well as retrospectively, and it was held that it did not.

In the case of Greene vs. Robison (109 Texas 367,210 S. W. 504), the Supreme Court reaffirmed what was held in the Cox case, sustained the constitutionality of Article 4041 R. S. 1895, which was attacked in so far as it applied to sales of school land theretofore made with reservation of minerals, and held that the purpose and effect of the Article, although but a re-enactment of the statute of 1879 in identical terms, was to extend the provisions of that statute to 1895, "just as fully as it was intended in the readoption of the successive Constitutions of 1869 and 1876, of the original validating provision of the Constitution of 1866, that its operation should be extended over those respective periods."

When, therefore, one desires to determine whether the State owns the minerals in a particular piece of land, the first step is to ascertain when the land was first disposed of by or acquired from the State. If it was acquired from the State prior to the date when the Revised Statutes of 1895 went into effect (September 1, 1895), then the State is not the owner of the minerals or of any interest in them. While a consideration of the various Acts of the Legislature prior to 1895, relating to the disposition of public lands, and particularly of the Acts of 1883 as construed in the Greene case, is interesting, for practical purposes it is unnecessary to consider or discuss the same, in view of the Act of the Legislature of 1895 in releasing to the owners of lands all minerals in them, and the decision of the Supreme Court in the Greene case that the Act was valid and effective for that purpose.

A discussion of the question when one becomes, as against the State, within the meaning of Article 4041 R. S. 1895, an owner of the soil, is not within the limits of this article, but brief mention may be made of some of the rules announced by the authorities and believed to be applicable. The exact question is not discussed in the cases.

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It is settled by the Greene case, however, that one may be an owner for such purpose before the land is patented, for the land involved in that case was unpatented school land, and the Court held that Article 4041 operated to release the minerals to the owner. This is in line with the decisions to the effect that one becomes a purchaser of school land upon the day his application is filed in the General Land Office, provided, of course, the application is in proper form, the required payment is made, and the purchaser has become a settler upon the land if it is sold upon condition of settlement. See Houston Oil Company vs. McGrew (107 Texas 220, 176 S. W. 45); Jumbo Cattle Company vs. Bacon & Graves (79 Texas 5, 14 S. W. 840); Pohle vs. Robertson (102 Texas 274, 115 S. W. 1166); Metzler vs. Johnson (20 S. W. 1116).

Likewise, it is doubtless true that the owner of a certificate becomes the owner of the land, within the meaning of Article 4041, after he has made his location and caused the survey to be made and the field notes filed in the Land Office in the manner and time required by law, that is, after he has done everything required of him to receive a patent. See Morrill vs. Bartlett (58 Texas 644); Hamilton vs. Avery (20 Texas 612); Stubblefield vs. Hanson, (94 S. W. 406).

One who has acquired land under the homestead donation or pre-emption laws, and who has performed all the conditions of settlement, occupancy and the like, as specified in the law under which the land is applied for, and so is entitled to a patent, is believed to have become an owner to whom the minerals are released by this Article. But a homesteader or pre-emptor who has not performed the conditions above referred to has but an inchoate right and cannot be said to be an owner within the terms of this Article. See: Gallup vs. Thacker (103 Texas 310, 126 S. W. 1120); Pope vs. Anthony (68 S. W. 521); Buford vs. Bostick (58 Texas 63); Votaw vs. Pettigrew (38 S. W. 215); Wise County Coal Company vs. Phillips, (51 S. W. 331).

Speaking generally, it may be safely said that Article 4041 R. S. 1895 had the effect of releasing the minerals in the land to every person who, prior to September 1, 1895, as against the State, had become the equitable owner of the

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land or who had taken all the steps necessary to be taken before demanding a patent, as well, of course, as to those who had theretofore acquired the legal title evidenced by the patent.

The greater part of the land which has been acquired from the States since 1895 has been purchased as public school or asylum land. It is to be remembered that as early as 1900 all of the vacant unappropriated public domain in the State except that included in lakes, bays and islands along the Gulf of Mexico within tide-water limits, was set apart to the public school fund. (Acts 1900, First Called Session, page 29.)

As to lands acquired from the State since 1895, other than by purchase as school or asylum land, it may be said that, because of the policy adopted and announced in the Constitutions and laws of the State favorable to private as against State ownership of the minerals in lands disposed of by the State, the owner of the land is the owner of the minerals in the land, except where, in the grant or in the documents evidencing the acquisition of the land from the State, the minerals are expressly reserved. In other words, the rule is the reverse of that in force during the days of Mexican sovereignty and of the Republic, to the effect that minerals did not pass by the ordinary grant without express words of designation.

As an example of lands acquired from the State since 1895, other than public school or asylum lands, the Board of Regents of the University have had, for purposes of sale and lease (until a change was made by the Mineral Act of 1913, as far as mineral permits and leases are concerned) exclusive control of the lands set apart to the University, with authority to sell the same at such prices and upon such terms and conditions as may to them seem to be best for the University. (Acts Twenty-fourth Legislature, Regular Session, page 19; Gammel's Laws, 749; R. S. 1895. Articles 4263a-4263c; R. S. 1911, Articles 2633-2635). Although most of the University lands remain unsold, there have been some sales made, and, for the purpose of determining whether in such sales the minerals have been reserved to the State, it is necessary to examine the contract or other documents evidencing the particular sale. If such

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contract or document contains nothing expressly reserving the minerals to the State, the purchaser has acquired the minerals as well as the surface.

(2) RESERVATION OF MINERALS IN SALES OF SCHOOL LAND SINCE 1895.

From 1895 (and indeed from 1889) and until the passage of the Mineral Act of 1913, there were in effect (with some unimportant change in the law first hereinafter mentioned) two laws regulating the acquisition from the State of public school and asylum land. One was the Sales Act of 1895 and its amendments (10 Gammel's Laws, p. 793; Revised Statutes 1895, articles 4218b-4218z). This law provided for and regulated the sales of all surveyed public school and asylum land. It authorized and made it the duty of the Commissioner of the General Land Office (or originally of State agents appointed by and acting under him), before offering the land for sale, to classify it into agricultural, pasture or timber land and to place on it a value or sale price. No reference was made in this law to minerals or to a reservation of the minerals in the sale. From time to time laws were enacted providing for and regulating the sale of unsurveyed public free school land (Acts First Called Session, Twenty-sixth Legislature, p. 32, Section 6; Acts Regular Session Twenty-seventh Legislature, p. 254, Section 6; Acts Regular Session, Twenty-ninth Legislature, p. 167, Section 8; R. S. 1911, Art. 5432). In each of these laws it was made the duty of the Commissioner, after the land was surveyed, to classify and value the land in the same manner as surveyed lands were classified and valued, and the terms and conditions of the sale were in general the same as the terms and conditions of the sale of surveyed land. Nor in the laws relating to the sale of unsurveyed land was any reference made to minerals or to reservation of minerals.

Since the enactment of the Sales Law of 1895 there have been many new laws enacted regulating the sale of public school land and many of the terms and conditions of the sales have been changed. None of these laws has repealed the Sales Act of 1895, except in so far as they have contained provisions in conflict or inconsistent with

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some of its terms. (See Estis vs. Terrell, 99 Tex. 622, 92 S. W. 407; Houston vs. Koonce, 106 Tex. 50, 156 S. W. 202; Gaddis vs. Terrell, 101 Tex. 574, 110 S. W. 429; Lefever vs. Jackson, 135 S. W. 212; Ford vs. Robison, 201 S. W. 401). The several later Sales Acts, with the exception of the Act of 1907 and the Act of 1919, contain nothing with reference to reservation of minerals. Section 6f of the Act of 1907 (Acts Thirtieth Legislature, Regular Session, p. 491) contains the following: "The land which is now or may hereafter be classed as mineral may be sold for agricultural or grazing purposes, but all sales of such land shall be upon the express condition that the minerals shall be and are reserved to the fund to which it belongs, and such reservation shall be stated in all applications to purchase." Section 2 of the Sales Act of 1919 (Acts Regular Session, Thirty-sixth Legislature, p. 312) amending Article 5407 R. S. 1911, contains this language: "The land included in this Act shall be sold with the reservation of the oil, gas, coal and other minerals that may be therein to the fund to which the land belongs and all applications shall so state."

The second law in effect during the period from 1895 until the passage of the Mineral Act of 1913, was the Mineral Act of 1895, which was practically identical with the Mineral Act of 1889, which it superseded. This Act appears as Articles 3498a to 3498t, R. S. 1895 (Acts Twenty-fourth Legislature, Regular Session, p. 197; 10 Gammel's Laws, p.927). This Act expressly reserved from sale, except under its provisions, all public school, university, asylum and other public lands containing valuable mineral deposits. By following the steps set out in this Act one might acquire the right to enter upon the lands and prospect for minerals, including oil and gas, and to obtain a patent of the land and minerals. By one section of the Act (Article 3498b, R. S. 1895) it was made the duty of the mineralogical and geological survey to examine all public school and other public land and to designate such tracts as were apparently mineral bearing as mineral lands for the purpose of the Act. By another section of the Act (Article 3498n, R. S. 1895), it was provided that an applicant desiring to buy any of the lands embraced in the Act, except where the application was made under the Act, should

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make oath that to the best of his knowledge there were not any of the minerals embraced in the Act thereon, and that any sale made under such application should be understood to be with the reservation of the minerals thereon. The Mineral Act of 1895 was in effect until it was expressly repealed by the Mineral Act of 1913. (Acts Thirty-third Legislature, Regular Session, p. 409.)

There are two very interesting opinions of the Supreme Court construing the Sales Act of 1895 and the Mineral Act of 1895, as far as reservation of the minerals is concerned. The first opinion was written by Judge Brown in the case of Schendell vs. Rogan (94 Tex. 585, 63 S. W. 1001). In that case the respondent, the Commissioner of the Land Office, made the contention that a purchaser of scool land, which had been classified and sold as agricultural land, was not entitled to a patent and that the sale to him was invalid, because he had not made the affidavit required by the Mineral Act to the effect that according to the best of his knowledge and belief the land contained no valuable minerals. It was argued that the two laws, the mineral law and the sales law, should be construed to mean that, unless public school land and the minerals in it were sold under the mineral law, it could only be sold with reservation of the minerals, and that the effect of Articles 3498a and 3498n of the mineral law was to reserve from sale, except under its terms, all land containing valuable minerals whether known or not, unless the purchaser made the affidavit above referred to. The Supreme Court held, however, that lands which did not contain valuable minerals were not included in Article 3498a, and that the article requiring the oath of the applicant that the land contained no minerals did not apply to lands classified as agricultural and not known to be mineral bearing, and that a sale made under an application for agricultural lands, which had been classified as such, carried a good title to the purchaser and entitled him to a patent granting the land without the reservation of the minerals. The Court was careful to state that it was not called upon to decide what would be the effect of prior actual knowledge by the purchaser of the existence of valuable minerals in the land.

It is settled by the Schendell case that under the Act of

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1895, lands not known to contain valuable minerals, and classified as agricultural, grazing or timbered and so sold, and not formally designated as mineral lands, are sold without reservation of the minerals. The stipulation in the Act of 1907 to the effect that land classed as mineral, could be sold for agricultural or grazing purposes but that in such sales the minerals should be reserved, made no change in the Acts of 1895 as thus construed, but it rather adopted and emphasized the construction given those Acts in the Schendell case, for the clear implication from the language of the Act of 1907 above referred to is that land not classed, or formally designated, as mineral, is sold without reservation of the minerals. Nor does it appear that the more positive language of the Sales Act of 1919, to the effect that the land included in the Act should be sold with reservations of the minerals, made any change in the law as to reservation of minerals, for in the Greene case (109 Texas 267, 210 S. W. 498) the Supreme Court held, in an able opinion by Chief Justice Phillips, that almost identical language in the Act of 1883 did not operate to reserve the minerals in lands classified and sold as agricultural and not known to contain valuable minerals.

The second of the Supreme Court opinions above referred to, construing the sales laws and the mineral law in effect after 1895, was written by Judge Williams in the case of Colquitt-Tigner Mining Co. vs. Terrell (95 Tex. 452, 68 S. W. 154). In the Schendell case the Commissioner had taken the position, not sustained by the Supreme Court, that the provisions in the Mineral Act of 1895 reserving the minerals to the State applied broadly to all sales of public school and asylum lands however classified. In the Colquitt-Tigner case the Commissioner sought to give the Mineral Act a very narrow application and contended that no mineral rights could be acquired under it except in lands which had been formally designated as mineral bearing by the mineralogical and geological survey. The position taken by the Commissioner in the latter case provided the occasion for a discussion by Judge Williams of the extent of the authority of the Commissioner of the Land Office to determine from sources other than the mineralogical and geological survey what lands are and what lands are

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not mineral lands, and because of this discussion in the opinion, the Colquitt-Tigner case has been considered an authority holding that the Commissioner is empowered to classify or designate public school and asylum land as mineral land. What the case in fact holds is that public school and asylum land may be within the terms of the Mineral Act of 1895 and mineral rights may be acquired in the land under that Act, even though it has not been formally designated as such for the mineralogical and geological survey, it being within the authority of the Commissioner to determine from information obtained otherwise than from such survey whether or not the land is mineral for the purpose of disposition under the mineral law. Although the question was not directly before the Court whether the Commissioner for the purpose of sales under the Sales Act was authorized to class or designate public school and asylum land as mineral land, with the result that the minerals would be reserved to the State in the event of sale, the reasoning in the opinion tends strongly to indicate, and indeed is practically convincing, that he has such authority. This is especially true of that part of the opinion to the effect that the Commissioner, being charged with the duty of disposing of the land under the two laws, must determine in some way the character of the land, as mineral or not, in order to know which law is to govern his action.

It is true that a purpose is disclosed by Article 3498b of the Mineral Law of 1895 that the geological and mineralogical survey shall examine all the public lands and designate, for the purposes of the law, such tracts as are apparently mineral bearing. Such survey was first authorized to be made in the year 1888 under the direction of the Commissioner of Agriculture, Insurance, Statistics and History (Acts First Special Session, Twentieth Legislature, p. 10; 9 Gammel's Laws, p. 1008). An appropriation of $15,000.00 was made for that purpose. Attention was called in the opinion of the Colquitt-Tigner case to the fact that the Legislature, which passed the Mineral Act of 1895, at the same session refused to make an appropriation for the continuation of the mineralogical and geological survey. Later, in the year 1901, an act was passed directing the Board of

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Regents of the University to make a mineral survey of all the lands belonging to the public schools, the university and asylums, and an appropriation of $10,000.00 was made for that purpose. (Acts, Regular Session, Twenty-seventh Legislature, p. 32.) Some work was done under both of these Acts, but it covered comparatively very little territory, and inquiry at the Land Office discloses the fact that from these surveys no data or information has come into that office in any way adequate for the designation of the public lands of the State as mineral or non-mineral. Because there has been no adequate mineralogical and geological survey, and acting under the authority of the Colquitt-Tigner case, or under the reasoning of the opinion in that case, it has been the practice of the Commissioner of the Land Office for many years, upon information obtained from any available sources, to designate certain of the public school and asylum lands as mineral. The practice has been to treat and make this designation as a part of the classification of the lands, although strictly speaking it is not a classification, because statutory authority is given to classify these lands only as agricultural, grazing or timbered lands. (R. S. 1911, article 5407.) In the opinion in the Schendell case (94 Tex. p. 595) attention is called to the fact that no "class" as mineral land is recognized by the law, but that it is contemplated that lands which have been *classified* as agricultural, pasture or timbered lands, and are found to be apparently mineral bearing, shall be *designated* as mineral lands. The distinction between technical classification as agricultural, grazing or timbered lands and designation as mineral lands may become important. For example, notification to the county clerk is essential to the completion of a classification (Article 5407, R. S. 1911), but it may very well be doubted whether it is essential that the county clerk be notified of the *designation* of the land as mineral.

The statutes may be searched in vain for any express authority on the part of the Commissioner of the Land Office to designate lands as mineral, so that when disposed of under the Sales Act the minerals are reserved to the State. Such authority rests upon implication, along the line of reasoning contained in the Colquitt-Tigner case, and upon departmental construction and practice. It seems to

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have been assumed by the Legislature in the enactment of Section 6f of the Sales Act of 1907 (Article 5433, R. S. 1911), providing that land classed as mineral might be sold for agricultural or grazing purposes but that such sales should be with reservation of the minerals, that the Commissioner of the Land Office had the authority to class lands as mineral. In the case of Camp vs. Smith (166 S. W. 22), in which application for writ of error was refused, it seems to have been assumed by the Court of Civil Appeals that the Commissioner has authority to class lands as mineral and that when the land is so classed the minerals are reserved to the State. Some lawyers seriously question the existence of such authority and take the position that when land has been so classed and sold the purchaser has acquired all of the minerals as well as the surface, because of a lack of power on the part of the Commissioner to designate the land as mineral. It seems more than likely, however, that the authority may be sustained, by reason of the decisions above referred to, and on account of long continued departmental practice.

To sum up, as a result of the Schendell case, the Colquitt-Tigner case and the statutes above referred to, the rule seems to be, as to all sales of public school and asylum land from 1895 to the present time (not made under the Mineral Act of 1895) that when the Commissioner of the Land Office before the sale formally classed, or designated, the land as mineral, the minerals were in the sale reserved to the State, but when the land at the time of the sale had not been formally classed, or designated, as mineral and the purchaser did not know that it contained valuable minerals, the purchaser acquired the minerals as well as the surface. It may be, as suggested in the Schendell case, that when the purchaser knows at the time that the land contains valuable minerals, although it has not been so classed, the State could set aside the sale as against such original purchaser, but it seems that as against subsequent innocent purchasers, relying upon the absence of a formal mineral designation, the sale could not be set aside.

It is essential, therefore, in order to ascertain whether the State in the sale of a tract of public school land or asylum land since 1895 reserved the minerals, to examine the

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records of the General Land Office and ascertain whether at the time of the sale the land was formally classed or designated as mineral. Such information may generally be obtained from the sales register, but for the sake of accuracy it should be sought in the classification records. Recitals in the application for the purchase of the land as to mineral classification or as to waiver of the minerals are not controlling, for whether these matters are correctly reflected by the application or not, it is the operation of the law and not the language of the application that reserves the minerals to the State in lands classed as mineral. Nor, in determining the ownership of the minerals, can complete reliance be placed in the recitals in the patent, when the land has been patented, for until about the year 1911 it was the practice of the Land Office, even where the minerals had been reserved to the State in the sale, to issue patents containing no reference to the minerals but in the usual form granting and releasing to the patentee all of the State's interest in the land. Such patent, however, could not enlarge the rights acquired by the purchase or deprive the State of the minerals which it had reserved in the sale, because it has been uniformly held that the issuance of a patent is a ministerial act and that its issuance contrary to law cannot prevent even an individual from enforcing against the patentee, or one holding under him, a right existing prior to the issuance of a patent. See: Kempner vs. State (72 S. W. 888); Day Land and Cattle Company vs. State (68 Tex. 526, 4 S. W. 865); Dunn vs. Wing (103 Tex. 393, 128 S. W. 108); Kirby vs. Conn (109 Tex. 540, 212 S. W. 469). If an individual can enforce such existing right against a patent, it certainly cannot be true that a patent, making no reference to reservation of minerals, can deprive the State of its right to the minerals reserved when the sale was made. Since 1911, and especially since the case of Cox vs. Robison was decided (November 27, 1912, 105 Tex. 426), it has been the practice in the General Land Office, in the issuance of patents to school and asylum land, which were sold with reservation of the minerals, to insert in the patent a clause showing such reservation.

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II. LAWS UNDER WHICH OIL AND GAS RIGHTS ARE ACQUIRED.

(1) THE RELINQUISHMENT ACT OF 1919.

The foregoing tedious discussion of the reservation of the minerals in the sales of school land would have been unnecessary, had the Act of 1919 (Acts, Second Called Session, Thirty-cixth Legislature, p. 249) been a full and unconditional release of the minerals to the land owners, but because, as has been noted, it is but a partial and conditional relinquishment, it is necessary, in order to know where the right to the oil and gas in a particular tract of surveyed school or asylum land lies, to ascertain whether the land was sold with or without reservation of minerals in the State. If it was sold without reservation of the minerals, the right to the oil and gas is in the land owner, and he is, of course, at liberty to dispose of such right upon any terms and conditions that may be agreed upon. But if the land was sold by the State with reservation of the minerals and no one fixed a right to the oil and gas under the law in effect prior to the time when the 1919 Act went into effect (October 21, 1919), then the land comes within the terms of the 1919 relinquishment Act. By its terms it releases to the owner of surveyed school and asylum land heretofore or hereafter sold with reservation of the minerals, an undivided fifteen-sixteenths interest in all oil and gas in the land and makes such land owner the agent of the State for the purpose of selling or leasing the oil and gas on such terms and conditions as the owner may deem best, provided the lessee or purchaser must in every instance pay to the State ten cents per acre and in case of production the undivided one-sixteenth of the value of the oil and gas. The Act requires the land owner, lessee or other person in charge, to protect the land by drilling offset wells under penalty of termination and reversion to the school fund of the relinquishment granted by the Act. Similar termination is provided for in the event of the failure of any person operating under the Act to pay the royalty or other money due the State, it being provided, however, that the interest of the owner of the soil in the oil and gas shall not on that account be forfeited. In the event of the termination of the relinquishment or of the rights of the per-

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son operating under the Act, for the reasons above referred to, it is provided that the Commissioner of the Land Office shall take possession of the land and sell the oil and gas in the same to the one who will pay the highest price therefor in addition to a one-eighth royalty, one-half of which is to be paid to the State and the other half to the owner of the soil. While the Act is somewhat ambiguous in this respect, taken as a whole, it seems to disclose a purpose that the owner of the soil, where there are permits or leases issued under the terms of the prior law, shall be entitled to one-half of the one-eighth royalty reserved by the State. This is indicated by the 6th and the 18th sections of the Act and also by the wording of Section 10, to the effect that the relinquishment of the fifteen-sixteenths to the owner of the soil is made subject to the rights existing under valid permits to prospect for oil and gas theretofore issued, or which may thereafter be issued upon valid applications then on file, and further providing that when the rights under such permits shall be terminated the relinquishment shall be *fully* effective.

It has been suggested that the relinquishment Act of 1919 is unconstitutional as amounting to a donation of school land or an interest in school land. Such difficulty was sought to be avoided by the statement in the first section of the Act that the owner of the soil is made the agent of the State for the purpose of facilitating the development of the State's oil and gas resources and that the relinquishment is made in consideration of such services. That part of the Act which gives to the owner of the soil one-half of the State's royalty in permits issued under the prior law (if the Act has that effect) may perhaps be sustained by reason of the fact that the Act recites that such one-sixteenth, and the payment of ten cents per acre to the owner of the soil, are in payment for all damages to the soil arising out of development under the permit. It may be also that the relinquishment can be sustained as being in the nature of a validating act, as it was on this ground that Article 4041, Revised Statutes 1895, absolutely releasing the minerals, was sustained in the Greene case. (109 Tex. 367, 210 S. W. 498, 504.)

It is to be observed that the relinquishment is both to ex-

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isting owners and to those who may in the future become owners of the soil, and that the relinquishment becomes effective in the latter instance only at the time the land is sold and provided only that no one has before the sale acquired under any other law a valid right to the oil and gas in the land. In other words, even since the relinquishment Act of 1919 went into effect, the right to oil and gas in unsold surveyed public school and asylum and can be acquired by complying with the terms of the Mineral Act of 1917 (Acts Regular Session, Thirty-fifth Legislature, p. 158), and when such rights are so acquired and continue in effect a subsequent purchaser of the land gets no interest in the oil and gas. (See Section 11, Acts Second Called Session, Thirty-sixth Legislature, p. 252.)

It is not our purpose to discuss in detail the various provisions of the relinquishment Act. What has been said above is for the purpose of pointing out the nature and extent of the interests of the State and of the surface owners in the oil and gas in surveyed school and asylum land, and further to call attention to some of the questions of construction suggested by the rather vague and ambiguous language of the Act. A brief consideration, however, of the meaning of the term "surveyed land" seems to be justified by the fact that the Act relates only to surveyed public school and asylum land, without defining what is meant by "surveyed land," and by the further fact that the same Legislature passed another law providing for the acquisition of oil and gas in unsurveyed public school land without defining it, (Acts Second Called Session, Thirty-sixth Legislature, p. 51.) What the legislative mind was directed to was doubtless surveyed land as distinguished from unsurveyed land or "scrap" land. For many years public school land, for sale purposes, has been classed as surveyed land sold on competitive bidding, and unsurveyed, or scrap land, sold at the price fixed by the Commissioner to the one first applying for it. Land of the first class has already been surveyed when the initial step in its acquisition is taken by the applicant and there is no necessity for the applicant to cause a survey of the land to be made, but in purchasing land of the latter class it is necessary that the applicant have it surveyed for the purpose of indentification and description and then file an application to purchase. The

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difference between these two classes of land is discussed and some of the authorities bearing upon the subject are cited in an opinion of the Attorney General to the Commissioner of the Land Office written October 7, 1915. (See Opinions, Attorney General, 1914-16, p. 568.) The Mineral Act of 1913, without defining surveyed land or unsurveyed land, provided that an application for a permit on unsurveyed land should be filed with the county clerk and an application for permit on unsurveyed land with the county surveyor. In the case of Sibley vs. Robison (110 Tex. 1, 212 S. W. 932) the Supreme Court approved the action of the Commissioner of the Land Office in treating as surveyed land within the meaning of that Act any area which had been theretofore lawfully surveyed under that Act, with the field notes approved by the Commissioner and filed in the General Land Office. The Mineral Act of 1917 (Acts Regular Session, Thirty-sixth Legislature, p. 164) defines surveyed lands under its terms as "all tracts for which there are approved field notes on file in the General Land Office."

The Attorney General, in an opinion to the Commissioner of the Land Office, dated September 26th, 1919, advised him that land should be regarded as public school land and sold as such in all instances where the land had actually been surveyed and field notes filed in the General Land Office, regardless of whether the survey was made for the purpose of purchasing the surface or for the purpose of leasing or purchasing the minerals in the land.

Every tract of public school land which is sold may be said, in a sense, to be surveyed land when sold, for the reason that even scrap land must be surveyed before the application is filed, and the sale dates from the filing of the application. The sale is made, however, in such case, under the law regulating the sale of unsurveyed or scrap land, and at the time when the intending purchaser takes the first step leading to the acquisition of the land by filing his letter of inquiry with the Commissioner (under the former law by filing his application for a survey with the county surveyor), the land is in fact, unsurveyed land. The writer is inclined to believe, therefore, that, in view of the foregoing authorities and Acts of the Legislature and from

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a practical viewpoint, surveyed public school or asylum land, within the meaning of the relinquishment Act of 1919, is such land as has actually been surveyed and field notes of which have been approved and filed in the General Land Office prior to the time the purchaser takes the initial step in acquiring the land, that is, it is land purchased under the Sales Act relating to surveyed public school and asylum land and which has actually been surveyed and the field notes of which have been approved and filed in the General Land Office before the application to purchase is filed in that office.

Uusurveyed public school land within the Act of July 23, 1919 (Acts Second Called Session, Thirty-sixth Legislature, p. 51), is, in our opinion, all public school land other than surveyed public school land, or all public school land which has not been actually surveyed or for which there are no approved field notes on file in the General Land Office. If at the time one desires to take the initial step to secure the oil and gas rights in the land, it is unsurveyed under the foregoing definition, then such rights can be secured only by competitive bidding under the Act of July 23, 1919. If, on the contrary, at the time one desires to secure the oil and gas rights, the school land is surveyed, that is, there are approved field notes for it on file in the Land Office, such rights may be acquired by taking the steps prescribed by the Mineral Act of 1917. The foregoing statements as to actual surveys made and the filing of field notes have reference, of course, to surveys made by authorized officers and made under lawful authority. An unauthorized survey could not change the status of an area from unsurveyed into surveyed land. See Landry vs. Robison (110 Tex. 295, 219 S. W. 819).

The Commissioner of the Land Office has tentatively construed the two Mineral Acts of 1919 as classing public school land as unsurveyed or surveyed land according to its status in that respect at the very time when the first of the two Acts of 1919 became effective, that is, he has ruled that land which was not actually surveyed or for which no field notes had been filed and approved in the Land Office prior to July 23, 1919, is unsurveyed school land within the meaning of the Act approved on that date relating to the acquisition of oil and gas rights in islands,

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tide water lands, unsurveyed lands, etc., and that even if such land is after July 23rd, 1919, actually surveyed and field notes approved and filed in the Land Office and is then sold as surveyed land, the purchaser acquires no interest in the oil and gas under the relinquishment Act, but the rights to the same must be acquired by competitive bidding under the Act of July 23, 1919. In other words, his construction is that the status of the land as surveyed or unsurveyed land for the purpose of the two Acts of 1919 must be determined as of July 23rd, 1919. The Commissioner's construction may be correct, but it seems to the writer that such construction is calculated to work inconsistent resutls. For example, one desiring to purchase after July 23rd, 1919, a tract of unsurveyed school land, files his letter of inquiry, causes the survey to be made, and files the field notes in the General Land Office. The Commissioner classifies and values the land, but for some reason the applicant fails to file his application to purchase within sixty days. Under the law the Commissioner places the land on the market and sells it as surveyed land. According to the ruling above referred to, the purchaser would get no interest in the oil and gas by virtue of the relinquishment Act, because the land was unsurveyed on July 23, 1919; and yet the purchaser bought it as surveyed school land and no other person had therefore acquired any right in the oil and gas, and the relinquishment Act expressly provides that fifteen-sixteenths of the oil and gas are released in all surveyed school land thereafter sold. Why should not this purchaser of surveyed school land acquire an interest in the oil and gas just as do all other purchasers of surveyed school land, and why should an intending purchaser of surveyed school land from the State be required to ascertain its status as surveyed or unsurveyed land on July 23, 1919, rather than at the very time he applies to buy it, in order to know whether he as a purchaser will acquire by his purchase an interest in the oil and gas?

(2) ACT OF JULY 23, 1919, RELATING TO OIL AND GAS IN UNSURVEYED SCHOOL LAND, ISLANDS, TIDE WATER LANDS, ETC.

This Act, which went into effect July 23, 1919 (Acts Second Called Session, Thirty-sixth Legislature, p. 51),

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expressly repealed so much of the Act of 1917 as related to the leasing of areas included in the new Act. It served, therefore, as far as future acquisition from the State of oil and gas is concerned, to remove the areas designated in the new Act from the operation of the mineral law of 1917 and to prescribe a new method for the acquisition of the oil and gas in such areas, the distinguishing feature being that under the new law these rights are acquired by competitive bidding. It is made the duty of the Commissioner of the Land Office to advertise the time when any area included in the Act shall be subject to lease and after the advertisement make the lease to the applicant who, in addition to a one-eighth royalty of the gross production and annual rents, will pay the largest sum for the lease. The leases are made for terms not exceeding twenty-five years, it being provided, however, that if production is not secured in ten years the lease shall terminate and the area again be subject to lease as in the first instance.

(a) *Unsurveyed School Land.*

The meaning of this term as used in the Act of July 23rd, 1919, has already been discussed. Before the enactment of the new law, rights to the oil and gas in unsurveyed school land were acquired by filing applications under the Mineral Act of 1917 (Acts Regular Session, Thirty-fifth Legislature, p. 158). Permits were issued to the first applicant who took the steps prescribed by the Act. Under that Act many permits have been issued, including permits on so-called vacancies, for land not included in the bounds of any survey is a part of the public domain which was set apart to the school fund by the Act of 1900. The issuance of such permits involves the determination of questions of boundary.

(b) *Islands, Submerged Lands, etc., Owned by the State Within Tide Water Limits.*

The areas included in the Act of July 23, 1919, in addition to unsurveyed public school land, are all islands, salt-water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas. The Act properly provides that leases be given only upon such areas

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as are owned by the State. The areas enumerated may be the subject of express grant by Act of the Legislature or under express legislative authority, but the policy of the State, as well as of the Republic, has been to reserve from sale, location and grant, the islands along the coast, as well as the land below the line of ordinary high tide. Such islands and tide lands have not been subject to location under certificates or to sale as school land and have been reserved to the State for the use of the general public, except in the few instances where they have been the subjects of express grant. See: State vs. Delesdenier (7 Tex. 76); Roberts vs. Terrell (101 Tex. 577, 110 S. W. 733); Texas Channel and Dock Company vs. State (104 Tex. 168, 135 Tex. 522); State vs. Jadwin, (85 S. W. 490); De Merritt vs. Robison (102 Tex 358, 116 S. W. 796); Baylor vs. Tittleback (49 S. W. 720); Hynes vs. Packard, (92 Tex. 44, 45 S. W. 562); Roseborough vs. Picton (34 S. W. 791); Galveston vs. Menard (23 Tex. 349); Galveston, etc., Co. vs. Heidenheimer, (63 Tex. 559); Landry vs. Robison, (110 Tex. 295, 219 S. W. 819).

The line along the shore between public and private ownership is, according to the common law, the line of ordinary high tide. This is more favorable to private ownership than the civil law, under which the line was at highest tide. It is not decided in the cases above cited whether the rule of the common law or the rule of the civil law is in effect in this State. It may be that in front of Spanish and Mexican grants the line of State ownership extends as far inland as highest tide, but for the sake of uniformity and in order to give private owners the benefit of the doubt, it is generally conceded that the division line is at ordinary high tide.

While it is settled that submerged land along the coast may be the subject of express grant, if the intention to include such land clearly appears, the contention was made in a petition for mandamus filed in the Supreme Court in November, 1917, in a case entitled Sparks vs. Robison, No. 3044, that the title to the bed of a salt water lake within the ebb and flow of the tide did not pass under a grant made by Mexican officials, by reason merely of the inclusion of the lake within the metes and bounds of the tract of land

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granted, there being no express legislative authority for the granting of such submerged land. The case presents an interesting question, but it was dismissed on motion of the relator. The action of the Supreme Court in granting the motion for leave to file the petition indicated the Court's belief that there was some merit in the relator's contention.

(3) THE MINERAL ACT OF 1917.

The two Acts of 1919 repealed the Mineral Act of 1917 (Acts Thirty-fifth Legislature, Regular Session, p. 158) only in part. The Act of July 23rd, 1919, expressly repeals the Act of 1917 in so far as it includes and provides for the leasing of the areas specified in the new Act. The relinquishment Act of 1919 repeals the Act of 1917 only to the extent that it conflicts with it. Oil and gas rights in the following areas belonging to the State may still be acquired under the terms of the Act of 1917: (a) River Beds and Channels, (b) Fresh Water Lakes, (c) University Land, (d) Unsold Surveyed Public School and Asylum Land, and (b) possibly, Land Sold as Uusurveyed School Land with Reservation of the Minerals. The foregoing areas, together with those enumerated in the Act of July 23rd, 1919, and surveyed school and asylum land sold with reservation of the minerals, now within the terms of the relinquishment Act, are all of the areas enumerated in the Act of 1917. No account need be taken of islands, marshes, etc., not within tide water limits, for they are either surveyed or unsurveyed school lands.

(a) *River Beds and Channels.*

River beds do not come within the meaning of such general language as "public school land," or "public lands," and on account of the principles of civil and common law reserving for public use the soil under navigable waters, river beds are not subject to exploration under the mineral Acts unless expressly declared so to be. See Landry vs. Robison (110 Texas 295, 219 S. W. 819). Oil and gas rights in river beds belonging to the State are not affected, therefore, by either of the Mineral Acts of 1919, but can be acquired only under the Act of 1917 which expressly applies to river beds.

The ownership of the beds of non-navigable streams

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depends upon the language of the grant of the adjoining land or of the field notes by which the land granted is described, for while the policy has been to permit private ownership of the beds of non-navigable streams, and the rule is that when a tract of land is bounded by a non-navigable stream the boundary line ordinarily extends to the center of the stream, if it clearly appears from the language of the grant, or its field notes, that the intention was to fix the boundary at the bank or at the water's edge, the bed of the stream, even though non-navigable, will not be included in the grant. See Dutton vs. Vierling (152 S. W. 450).

Through the operation of a surveying statute in force since 1837 (now Article 5338, Revised Statutes 1911), as well as in pursuance of a settled policy to reserve the beds of navigable waters for the use of the public, the beds of navigable streams in Texas have been reserved by the State. The language of the statute is:

"All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of lines previously surveyed under the laws will permit; and all streams, so far as they retain an average width of thirty feet, shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey."

In the case of Austin vs. Hall (93 Tex. 591, 57 S. W. 563) attention is called to the fact that the first portion of this article, which specifies the manner in which surveys shall be made on navigable water courses, relates to waters which are navigable "according to the general rule of decisions on that subject," and discloses a purpose to reserve to the State the title to the beds of all streams navigable according to the general rule of decisions, and that the second portion of the article arbitrarily classifies as navigable also those streams which retain an average width of thirty feet. The general rule of decisions above referred to in the United States is that those streams are navigable and public which are navigable in fact or which have the capacity of use by the public for the purpose of transporta-

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tion and commerce, as well as those which are within the ebb and flow of the tide. See: Bigham Bros. vs. Pt. Arthur Canal Co. (126 S. W. 324); Burr's Ferry vs. Allen (149 S. W. 358, 164 S. W. 878); Orange Lbr. Co. vs. Thompson (113 S. W. 563, 126 S. W. 604); Petty vs. San Antonio (181 S. W. 224). As a result of this statute, as so construed, the State has reserved the beds of streams navigable in fact and also of all streams "so far as they retain an average width of thirty feet." It is doubtless sufficient to test the navigability of a stream by the rule of thirty feet, for it is not likely that many streams, if any, are navigable in fact which are less than thirty feet wide.

By none of the decisions of our appellate courts, unless it is decided by the case of King vs. Schaff (204 S. W. 1039), has the location of the line between public and private ownership along navigable streams been directly determined. The question is involved in some pending litigation with respect to lands in Wichita County along Red River.

In Austin vs. Hall (93 Tex. 591, 57 S. W. 563) Judge Brown says that the grant of a tract of land upon a navigable stream, whether navigable in fact or by virtue of the statute, gives title to the grantee "only to the water line of such stream." He does not state, however, whether such line is at high water mark or low water mark. In Bunnell vs. Sugg (135 S. W. 701), the Court while holding that it was unnecessary to determine the question, seemed inclined to the view that the navigability of a stream within the meaning of the statute was to be determined by the average width of the water in ordinary seasons.

Careful consideration was given to this question by Judge Buck in the case of King vs. Schaff (204 S. W. 1039), and he approved the line of authorities taking the middle ground and holding that the bed of the river reserved by the State is "that portion of its soil which is alternately covered and left bare as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year without reference to the extraordinary freshets of the winter or spring, or the extreme drouths of the summer or autumn."

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Inquiry as to the navigability of a stream for the purpose of ascertaining the ownership of its bed must be directed, of course, to the time the land on the bank was appropriated from the public domain. The fact that the field notes of the adjoining survey show a purpose not to include the bed of the stream, tends strongly to prove that when the land was appropriated the stream was thirty feet or more in width or navigable in fact, and that the bed was reserved to the State; and conversely the fact that the field notes call for the survey to cross the stream is persuasive that the stream was not navigable. See: King vs. Schaff (204 S. W. 1039).

There are instances, however, where a survey has actually been made and the land patented across a stream very obviously navigable. It is held in Bunnell vs. Sugg (135 S. W. 701) that such fact does not render the survey or patent void, and that the patent cannot be attacked on that account by one claiming under a junior grant. The title to the river bed, however, was not involved in that case. While it was not necessary to the decision of the case, the opinion was expressed in the case of King vs. Schaff (204 S. W. 1039, 1041) that a patent including within the land described in its field notes a part of the bed of a navigable stream, would be at most voidable at the instance of the State, and as to third parties would convey title to the bed of the stream. The Supreme Court, in the case of New York and Texas Land and Cattle Company vs. Thomson (83 Tex. 169, 17 S. W. 920), held that the location of a certificate across a navigable stream was illegal and that such location would not protect the land from subsequent location by a valid certificate. See also the recent opinion of the Supreme Court in the case of Landry vs. Robison (110 Tex. 295, 219 S. W. 819), citing with approval the case last above referred to and discussing the principles of the civil law and the common law reserving for the benefit of the public the soil under navigable waters.

The Commissioner of the Land Office has ruled that the beds of navigable streams which are included within the meets and bounds of patented lands, are not subject to prospecting under the Mineral Act. This ruling is in part sustained by the dicta in the cases above referred to,

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and, it seems, is sustained by the reasoning in the recent opinion of the Supreme Court in the case of Fitzgerald vs. Robison (110 Tex. 468, 220 S. W. 768).

The rules of accretion and reliction, as well as the rules of avulsion, have been recognized by the Texas courts and applied in determining the line of ownership upon navigable streams. See Denny vs. Cotton (22 S. W. 122); Goar vs. Rosenberg (115 S. W. 653); Siddal vs. Hudson (201 S. W. 1029, 206 S. W. 381).

Many of the questions above considered as to the ownership of beds of navigable streams are discussed in an opinion of the Attorney General to M. M. Burch, written December 1st, 1915 (Attorney General's Report 1914-16, p. 811).

That the line between public and private ownership along a navigable stream, where the field notes of the survey make the river bank its boundary, is at the bank, which confines the waters of the stream in time of ordinary high water, rather than at a bluff remote from the channel, which confines the water in case of unusual floods, is held in an opinion of the Attorney General to the Commissioner of the Land Office written September 2nd, 1918, with reference to Red River. (Opinion No. 1946, Attorney General's Report, 1916-18, p. 352.) Many of the questions above referred to are involved in the suit pending in the Supreme Court of the United States between Texas and Oklahoma as to the boundary line along Red River.

(b) *Fresh Water Lakes.*

The beds of small non-navigable lakes have very properly been treated as land and included within the bounds of grants, with the result that they do not belong to the State and are not within the Mineral Act of 1917. There are some instances in which lakes of considerable size have been included within the bounds of granted lands. The matter in controversy in the case of Lakeside Irrigation Co. vs. Kirby (166 S. W. 715) was the right to take water from Eagle Lake, which contained an area of 1250 acres and was included within the metes and bounds of two surveys. It was assumed by the Court that the bed of the lake belonged to the owners of the surveys. The Court,

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in the case of Welder vs. State (196 S. W. 868), in which was involved the title to the bed of Green Lake in Calhoun County, covering an area of about five thousand acres, was careful to state that the issue in the case was not whether the State could grant title to land in the bed of a natural permanent fresh water lake, but whether it had in fact done it as to Green Lake. Whatever may be the correct rule as to the power of the officers of the State to include the bed of a fresh water lake of a considerable size in a grant, it seems to be settled by the opinion of the Supreme Court in the Fitzgerald case, that if the bed of the lake has been patented by the State, the Commissioner of the Land Office should not disregard the patent and issue a permit upon the lake bed.

In the Welder case (196 S. W. 868) it is held that the rule which gives to grantees of land, bounded by a non-navigable stream, title to the bed of the stream, has no application to lands bordering upon a non-navigable lake of large area, and that the bed of such lake belongs to the State. It is further held in that case that ownership of surveys bordering upon a navigable fresh water lake carries with it no ownership of the bed of the lake, and further that a lake large and deep enough to be useful to the public for boating and fishing, as well as those which have a capacity for commercial purposes, should be held to be navigable, and, therefore, public and not private property.

(c) *University Land.*

The two Mineral Acts of 1919 make no reference to university land, except that the relinquishment Act provides in its 17th section that the provisions of the Act with reference to combinations of permits and extensions of time for beginning development and time for development shall apply to permits issued, or to be issued, upon university land. The Attorney General in an opinion to the Commissioner of the Land Office, held that only in these respects were university lands affected by the relinquishment Act. (Attorney General's Report 1918-20, p. 266.)

The oil and gas rights in university lands are still acquired under the Mineral Act of 1917, and the terms and conditions of their acquisition, with the exceptions above mentioned, are regulated by the provisions of that Act.

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In an opinion to Commissioner of the Land Office written June 2nd, 1919 (Opinion No. 2079, Bk. 53, p. 65, Attorney General's Report 1918-20, p. 349), the Attorney General advised him that the one million acres of land, which had been set apart to the university by the Act of 1883, and which had been surveyed into large blocks, the exterior lines being actually surveyed and the interior platted into sections in the Land Office, were not surveyed lands, as defined in the Mineral Act of 1917, but were unsurveyed, and that applications for permits upon such lands should be filed with the county surveyor.

The Legislature by an Act approved October 2, 1920 (Acts Fourth Called Session Thirty-sixth Legislature, p. 5), authorized the grouping into development areas of certain permits theretofore issued on university lands, and extended such grouped permits for a period of five years from the date of the permit last issued on land in such area.

(d) *Unsold Surveyed Public School and Asylum Land.*

Rights to the oil and gas in unsold surveyed public school and asylum land may still be acquired under the Mineral Act of 1917. When such rights are acquired, a subsequent purchaser of the land, according to the express terms of Section 11 of the relinquishment Act of 1919, secures no right to oil and gas in the land through his purchase, but upon termination of such rights according to the terms of the law under which they were obtained, then the owner of the surface becomes the owner of fifteen-sixteenths of the oil and gas under the relinquishment Act.

(e) *Land Sold as Unsurveyed School Land With Reservation of the Minerals.*

It has been shown that when land is classed as mineral and sold under the scrap Act, the purchaser of the land obtains no interest in the minerals. If we are correct in the position which we have taken to the effect that land so sold is thereafter to be treated, for the purpose of the mineral laws, as surveyed land by reason of the fact that it was actually surveyed and field notes were filed and approved before the sale, then the first person who, after the sale is made, or who after the field notes are filed and ap-

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proved, files application for a permit with the county clerk and takes the other steps prescribed by the Act of 1917, is entitled to a permit. If the Commissioner's ruling that the status as surveyed, or unsurveyed, land must be determined as of July 23rd, 1919, is correct, and the land had not been surveyed and field notes filed and approved by that date, then such land is unsurveyed land under the mineral laws and oil and gas rights must be acquired by competitive bidding under the Act of July 23rd, 1919.

III. EXCESS WITHIN SOLD SURVEYED SCHOOL LAND.

The general rule as to excess within a survey of land acquired from the State is such excess may be held by the purchaser of the survey until the State by direct action causes the excess to be partitioned or otherwise set apart to it. See: Willoughby vs. Long (96 Tex. 194, 71 S. W. 545); Wright vs. Gale (104 Tex. 450, 140 S. W. 91, 143 S. W. 141). This is the theory of the State's suit for the recovery of the excess within the Capitol Leagues and is the basis of the judgment rendered in its favor on Oct. 15, 1920, for the setting apart to the State by partition of 55,000 acres out of the Capital Leagues. The case is now pending on appeal in the Court of Appeals at Austin.

It seems to be settled by the two Supreme Court decisions last above cited that a purchaser of a whole section of surveyed school land before the issuance of a patent to him has the option, under Articles 5396 to 5400, Revised Statutes, 1911, for a period of six months after the existence of the excess is disclosed by a resurvey, of purchasing the excess at the price and upon the terms of the original purchase, and that as against such right and before the excess is segregated and set apart to the State, a third person cannot acquire a right in the excess land (See also Standefer vs. Vaughn, 219 S. W. 484, 491). Many purchases have been made under the Sales Act of 1895, and its amendments, of quarters and other sub-divisions of sections of surveyed school land containing undisclosed excesses. That act provided that sales should be of entire sections or of multiples of eighty acres out of such sections, and it has been seriously contended that a purchaser of such subdi-

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vision of a section has no right to purchase the excess subsequently disclosed in such subdivision. The Supreme Court, however, in the case of Anderson vs. Robison et al., decided March 23, 1921, held that the purchaser of such subdivision has the prior right to purchase the excess, and that as long as such prior right exists, another person cannot fix a right in the excess land by filing an application for a mineral permit.

IV. SCHOOL LAND RE-PURCHASED UNDER THE RELIEF ACT OF 1913.

The Thirty-third Legislature passed an act giving to the owners of school land, purchased within certain dates and forfeited for non-payment of interest accrued before the passage of the act, a preference right to repurchase the land within a certain time after the forfeiture. (Acts Thirty-third Legislature, Regular Session, p. 336, Articles 5423a-5423f, Vernon's Sayless' Civil Statutes.) The act was held to be constitutional by the Supreme Court in the case of Judkins vs. Robison, 109 Texas 6 (160 S. W. 955). By the act was created a board of appraisers, consisting of the commissioner of the land office and two other members to be appointed by the governor, and it was provided that for the purpose of the repurchase this board should ascertain the reasonable value of the land and apraise it accordingly. The word "classfy" was used in certain portions of the act in connection with the duties of the board, and the board, in many instances, if not in all instances, not only appraised, or fixed a value on the land, but classified it as well. In some instances the board classified the land as mineral and grazing, or mineral and agricultural, when the land as originally purchased had not been classed as mineral and had been sold without reservation of the minerals. In other instances, where the land was originally sold with reservation of the minerals or after being classed as mineral, the board classified it simply as grazing or agricultural. Rather close questions arise whether, in the first case above, the State after the repurchase by the former owner remained the owner of the minerals on account of the mineral classification placed upon the land by the board, and, in the second case above, whether the former owner in his re-

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purchase acquired the minerals in the land by reason of the failure of the board to class the land as mineral. The Attorney General in an opinion to the Commissioner of the Land Office, written June 25th, 1919 (Opinion No. 2105 Bk. 53, p. 198, Attorney General's Report 1918-20, p. 302) held that the act did not give the board authority to class the land as mineral. In the case before the Attorney General the land had been sold originally with reservation of the minerals in the State and after the forfeiture was classified by the board as grazing land. It was held in the opinion that the former owner, by his repurchase under such circumstances did not acquire the minerals. The identical question is involved in a petition for mandamus against the Commissioner of the Land Office in cause No. 3536, Johnson vs. Robison, Comr. et al., pending in the Supreme Court. In the case of Johnson vs. Sunshine Oil Co. (227 S. W. 698) the Court of Civil Appeals held that the Act of 1913 does not give the board of appraisers authority to reclassify the land.

V. FITZGERALD VS. ROBISON.

Can a valid permit to prospect for oil and gas be issued by the land commissioner upon land covered by a void patent? Some of the language in the opinion of the Supreme Court in the recent case of Fitzgerald vs. Robison (110 Tex. 468, 220 S. W. 768) seems to indicate that it cannot be. The Court held in that case that the Commissioner of the Land Office cannot be compelled by mandamus to issue a permit upon patented land, even though the patent may be void, and announced that the Supreme Court will not pass upon the validity of patents in mandamus proceedings brought by private parties against the land commissioner, approving and quoting from the opinion announcing the same rule in the case of Juenke vs. Terrell, (98 Tex. 237, 82 S. W. 1025).

In the opinion in the Fitzgerald case the folowing statements are made:

"We do not think the land commissioner, an executive officer, has the authority or is at liberty to disregard the patent, by his own action in effect declare it void, and grant rights in conflict with it; and he should not be compelled

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to do so. * * * The commissioner is not a judicial officer. It is not his function to annul grants of land formally made by the State, and because so made, entitled to be respected until set aside by judicial proceedings."

Do these statements mean that if the commisioner disregards a void patent and issues a permit upon the land covered by the patent, the permit is void? If they do, they appear to be in conflict with several earlier decisions of the Supreme Court holding that a patent which is wholly void constitutes no obstacle whatever to the acquisition of rights in such land under the State by other persons. (See Sherwood vs. Fleming, 25 Tex. Sup. 408; Gammage v. Powell, 61 Tex. 629; Jumbo Cattle Co. vs. Bacon and Graves, 79 Tex. 5; Stewart vs. Cook, 62 Tex. 522.) To reconcile it with the earlier decisions, it seems that the Fitzgerald case must be construed as holding merely that, since the commissioner is not a judicial officer and it is not his function to annul grants formally made by the State, he cannot be compelled by mandamus to issue a permit upon land included within a patent and thus in effect annul the grant.

The positive language used by the Supreme Court in this late decision strongly evidences a disposition on the part of the Court to look with disfavor upon the disturbing of land titles.

VI. RECENT ACTS OF THE LEGISLATURE.

While it is not the purpose of this article to discuss the details of the statutes relating to oil and gas rights in State lands, it is deemed advisable to call attention to two acts passed by the Thirty-seventh Legislature at its regular session, extending the terms and modifying the conditions of permits theretofore issued. These acts do not affect permits upon sold school land. They appear on pages 7 and 121 Acts Regular Session Thirty-Seventh Legislature.

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Texas Constitutions

Texas Statutes and Opinions in the foregoing Article which are not printed in full in the main work.

CONSTITUTION OF 1866.

ARTICLE 7. SECTION 39.

That the State of Texas hereby releases to the owners of the soil all mines and mineral substances, that may be on the same, subject to such uniform rate of taxation, as the Legislature may impose. All islands along the Gulf Coast of the State, not now patented, or appropriated by locations under valid land certificates, are reserved from location or appropriated (appropriation in any other manner by private individuals than as the Legislature may direct.

CONSTITUTION OF 1869.

ARTICLE 10. SECTION 9.

The State of Texas hereby releases to the owner or owners of the soil all mines and mineral substances that may be on the same, subject to such uniform rate of taxation as the Legislature may impose.

CONSTITUTION OF 1876.

ARTICLE 14. SECTION 7.

The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

REVISED STATUTES 1879.

SECTION 3800.

Exact wording, as in Constitution 1876.

REVISED STATUTES 1895.

SECTION 4041.

Exact wording, as in Constitution of 1876.

REVISED STATUTES, 1911.

Articles 5396-5400 incl.

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GENERAL LAWS OF THE STATE OF TEXAS 24TH LEGISLATURE, PAGE 19. (YEAR 1895.)

[S. B. N. 110.] CHAPTER 18.

An act to invest the Board of Regents of the University of Texas with the management and control of the University lands.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That the Board of Regents of the University of Texas are hereby invested with the sole and exclusive management and control of the lands which have heretofore been or which may hereafter be set aside and appropriated to or acquired by the University of Texas, with the right to sell, lease and otherwise manage, control and use the same in any manner and at such prices and under such terms and conditions as may to them seem best for the interest of the University, not in conflict with the Constitution of this State: *Provided,* that such land shall not be sold at a less price per acre than the same class of land of other funds may be sold at under the statutes.

SECTION 2. The Commissioner of the General Land Office is hereby directed to furnish as soon as practicable to the said Board of Regents complete and accurate maps and all other data necessary to show the location and condition of every tract of said University lands, and shall at all times hereafter furnish to said board such additional information as they may require, and shall at all times render to said board such assistance as may be possible and as they shall request in the discharge of the duties hereby imposed on said board.

SECTION 3. All records and accounts of transactions in University lands, and of moneys paid thereon, shall be kept in the General Land Office and in office of the Treasurer, as heretofore, and all patents shall be signed and issued as heretofore, and all moneys received on the sales or leases of said lands shall be paid to the Treasurer of the State.

SECTION 4. Whereas, it is desirable to place said University lands under the control of the Board of Regents at as early date as possible, in order that the interests of the University be properly looked after, and the greatest possi-

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ble amount of revenue realized, it is declared that an imperative public necessity exists requiring the suspension of the Constitutional rule which requires bills to be read on three several days, and the same is hereby suspended, and that this act take effect and be in force from and after its passage, and it is so enacted.

[NOTE.—The foregoing act was presented to the Governor of Texas for his approval on the first day of March, A. D. 1895, but was not signed by him nor returned to the house in which it originated with the objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.—ALLISON MAYFIELD, Secretary of State.]

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GENERAL LAWS OF TEXAS, 24TH LEGISLATURE, 1895, PAGE 197.

ARTICLE 4218*b*. Sale and lease of public lands provided for.

All lands heretofore or hereafter surveyed and set apart for the benefit of the Public Free Schools, the Lunatic Asylum, the Blind Asylum, the Deaf and Dumb Asylum, and the Orphan Asylum shall be sold and leased under the provisions of this chapter. [Acts 1895, p. 63, § 1.]

ARTICLE 4218*c*. Duties of Commissioner of the General Land Office.

The Commissioner of the General Land Office is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion [direction] of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful inclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this chapter, or by the constitution of the state. He shall, as soon as practicable, adopt such regulations not inconsistent with the constitution or this chapter as may be deemed necessary for carrying into effect the provisions of this chapter, and may from time to time alter or amend such regulations so as to protect the public interest; but all regulations shall be submitted to the governor for his approval before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases and all other forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may from time to time call upon the attorney-general to prepare such forms; and it shall be the duty of that officer to furnish the Commissioner of the General Land Office with such advice and legal assistance as may be requisite for the due execution of the provisions of this chapter; and it shall be the duty of such Commissioner to call upon the attorney-general for advice whenever there is any doubt as to the meaning of this chapter or any provisions thereof. [Ib., § 2.]

ARTICLE 4218*e*. Commissioner may classify and reclassify.

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The Commissioner of the General Land Office may, from time to time, as the public interest may require, classify any or all of the lands belonging to the several funds mentioned in this chapter that have not been heretofore classified, upon such facts as may be satisfactory to him, designating the same as agricultural, grazing or timbered land, according to the fact in the particular case; and he may prescribe such regulations in relation thereto as he may deem necessary to secure a correct classification. He may also reclassify any lands heretofore erroneously classified, upon the official certificate of the Commissioners' Court of the county in which said land is situated, or of the county to which such county is attached for judicial purposes, certifying what the proper classification should be, said certificate to be signed by the entire Commissioner's Court, including the county judge, or upon such other evidence as may be satisfactory to the Commissioner. [Ib., § 4; amended, Acts 1897, p. 184.]

ARTICLE 4218*f*. Classified lands subject to sale to actual settlers.

When any portion of said land has been classified to the satisfaction of the Commissioner of the General Land Office, under the provisions of this chapter or former laws, such land shall be subject to sale, but to actual settlers only, except where otherwise provided by law, and in quantities of not less than eighty acres or multiples thereof, nor more than four sections containing six hundred and forty acres, more or less; provided, that the purchaser shall not include in his purchase more than two sections of agricultural land; and provided, that where there is a fraction less than eighty acres of any section left unsold, such fraction may be sold. Any *bona fide* purchaser who has heretofore purchased or who may hereafter purchase any lands as provided herein shall have the right to purchase other lands in addition thereto; provided, that the total of his purchases shall not exceed four sections, and that it shall not include more than two sections of agricultural land, upon his making oath that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested

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in the purchase thereof. And if he or his vendor has already resided upon his home section for three years, or when he or his vendor, or both together, shall have resided upon it for three years, the additional lands purchased may be patented at any time. In all cases where a settler purchases more than one section, the lands in excess of one section so purchased, must be situated within a radius of five miles of the land occupied by him. Where any of the lands referred to in this Act have been sold prior to July 30, 1895, in quantities greater or less than forty acres or multiples thereof, and are in good standing as to interest payments, they may be patented in such quantities. In any cases where lands have been forfeited to the State for the non-payment of interest, the purchasers or their vendees may have their claims reinstated on their written request, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement; provided, that no rights of third persons may have intervened. In all such cases the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occured. [Ib., § 5; amended, Acts 1897, p. 184.]

ARTICLE 4218*ff*. Forfeiture of land on which purchaser settles.

When any purchaser buys and settles upon a section or part of a section of school lands, and buys, either at the same time subsequently, other lands in addition thereto, a forfeiture for any legal cause of the part on which he resides, at any time before the three years' residence thereon has been completed, shall work a forfeiture of the entire purchase, except such part thereof as he may have previously sold to another. But after the three years' residence has been completed, a forfeiture of the home tract shall not of itself work a forfeiture of the other tract or tracts. In case of sale of any of said tracts before the three years' residence has been completed, the vendee must reside thereon until he has completed the three years' occupancy from the date of the original purchase, and a failure to do so shall subject his land to forfeiture; but in case of sale of any of said tracts after the completion of the three years' residence, the vendee shall be exempt from the condition of settlement and occupancy. [Acts 1897, p. 184.]

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ARTICLE 4218 *fff*. Owner of land may buy contiguous lands; provision as to occupancy.

Any actual, *bona fide* owner of and resident upon any other lands contiguous to said lands, or within a radius of five miles thereof, may also buy any of the aforesaid lands, but in such case a failure to reside upon either his other lands or upon a part of the additional lands so purchased by him, so as to make his ownership and occupancy thereof continuous for three years, shall work a forfeiture of such additional lands so bought from the State, unless he shall have sold his land to another who may and does complete a three years' continuous ownership and occupancy of and residence upon his said lands as above stated and as is herein required of actual settlers. [Acts 1897, p. 184.]

ARTICLE 4218*g*. Commissioner of Land Office to notify county clerks.

It shall be the duty of the Commissioner of the General Land Office to notify in writing the county clerk of each county of the valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, which he offers for sale, which notification shall be kept by the clerk in his office and recorded in a well bound book, which shall be open to public inspection. [Acts 1895, p. 63, § 6.]

ARTICLE 4218*h*. Price of public free school and Asylum lands.

All agricultural land belonging to the public free school and the several Asylum funds shall be sold at not less than one dollar and fifty cents per acre; and all grazing lands shall be sold at not less than one dollar per acre; and all timbered lands shall be sold at not less than five dollars per acre. By timbered lands is meant lands valuable chiefly for the timber thereon. Provided, that the owner of land which is in fact agricultural, purchased under former laws, and which land is not subject to forfeiture at the time this law goes into effect, shall not be permitted, in case said land is forfeited, to purchase said forfeited land from the State for a less price per acre than the contract price under the former sale. [Ib., § 7; amended, Act. 1897, p. 184.]

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ARTICLE 4218*j*. Commissioner to make all sales; conditions of same; status of vendee of original purchaser; sales after forfeiture; payments, etc.

All sales shall be made by the Commissioner of the General Land Office, or under his direction, and he shall prescribe suitable regulations whereby all purchasers shall be required to reside upon, as a home, the land purchased by them for three consecutive years next succeeding the date of their purchase, except when otherwise provided. Such regulations shall require the purchaser to reside upon the land for three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the Commissioner of the General Land Office within two years next after the expiration of said three years, by his affidavit, corroborated by the affidavits of three disinterested and credible persons, to be certified by some officer authorized to administer oaths, and on making such proof the Commissioner shall issue to the purchaser, his heirs and assigns, a certificate showing that fact.

If, however, any purchaser has sold his purchase, or any part thereof, his vendee shall be permitted to compute the time of the occupancy of his vendor as a part of his own occupancy; and if any person has sold the whole or any part of his purchase under this or any former law, his vendee, or if he refuses to do so, the vendor himself, may make proof of occupancy as provided herein.

Any person desiring to purchase land in accordance with the provisions of this chapter shall forward his application to the Commissioner, describing the land sought to be purchased, which application shall be accompanied with the affidavit of the applicant, in effect that he desires to purchase the land for a home, and has in good faith, settled thereon, except where otherwise provided herein, and he shall also swear that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof.

Any owner of land heretofore purchased, and which land has been or may be forfeited for non-payment of interest, shall have ninety days prior right after this chapter

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goes into effect, or after the land is again placed upon the market, to purchase said land without the condition of settlement and occupancy, in case it has been occupied for three consecutive years as required by law; but if not, then he shall reside thereon until the occupancy under the first and last purchase shall together amount to said term of three years; provided, that when any forfeiture has been made the Commissioner of the General Land Office shall add to the appraised value of such land the amount of interest due thereon at the time of forfeiture, which shall be paid in cash with the first payment of one-fortieth of the appraised value of the land when purchased under the preference right to purchase given herein.

Any original purchaser or his vendee of any of the lands, the sale of which is provided for in this chapter, who has improved such land as a home, and who has been forced to temporarily abandon same on account of drouth, and who shall in good faith re-occupy the same, either by themselves or vendees, within six months after this chapter goes into effect, shall not have the forfeiture declared against them under the law providing for the forfeiture of such lands for non-occupancy; provided, that they shall make affidavit, supported by the affidavit of three disinterested witnesses, that they have re-occupied the land as a home in good faith, and that they had abandoned the same since their purchase on account of the drouth and not otherwise; and such absence shall not be deducted from the three years' occupancy required by law in making final proof of occupancy; and provided further, that any purchasers or their vendees of such lands who have failed to make proof of occupancy as required by the law regulating such purchases shall have six months after this chapter shall take effect to make proof of occupancy as required by the provisions of this chapter.

The purchaser shall transmit to the Treasurer of the State one-fortieth of the aggregate purchase-money for the particular tract of land, and send to the Commissioner his obligation to the State, duly executed, binding the purchaser to pay to the State on the first day of November of each year thereafter, until the whole purchase-money is

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paid, one-fortieth of the aggregate price, with interest at the rate of three per cent. per annum on the whole unpaid purchase-money, which interest shall also be payable on the first day of November of each year; and upon receipt of one-fortieth of the purchase-money by the Treasurer, and the affidavit and obligation aforesaid by the Commissioner, the sale shall be deemed and held effective from the date the affidavit and obligation are filed in the General Land Office; provided, that if the land applied for be timbered land, then the purchaser shall be required to pay the full amount of the purchase-money at the time of his purchase. [Ib., § 9.]

ARTICLE 4218*k*. Optional payments; original purchasers may sell, etc.

Purchasers shall have the option of paying the purchase-money for their lands in full at any time after they have occupied the same for three consecutive years; and when they have made such payment in full, together with the proof that they have occupied the land for three consecutive years, they shall receive patents for the same upon payment of the patent fee prescribed by law.

Purchasers may also sell their lands, or a part of the same, in quantities of forty acres or multiples thereof, at any time after the sale is effected under this chapter, and in such cases the vendee, or any subsequent vendee, or his heirs or legatees, shall file his own obligation with the Commissioner of the General Land Office, together with the duly authenticated conveyance or transfer from the original purchaser and the intermediate vendee's conveyance or transfer, if any there be, duly recorded in the county where the land lies or to which said county may be attached for judicial purposes, together with his affidavit, in case three years' residence has not already been had upon said land and proof made of that fact, stating that he desires to purchase the land for a home, and that he has in good faith settled thereon, and that he has not acted in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase, save himself, and thereupon the original obligation shall be surrendered or can-

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celed or properly credited, as the case may be, and the vendee shall become the purchaser direct from the State, and be subject to all the obligations and penalties prescribed by this chapter, and the original purchaser shall be absolved in whole or in part, as the case may be, from further liability thereon; provided, that whenever a town shall be located and established upon any lands sold under this or any former chapter, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the State upon such land and obtain a patent therefor at any time, but no such payment shall be permitted or patent issued until such purchaser or owner of such land shall file in the General Land Office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein, and is being occupied by *bona fide* citizens, twenty business and residence houses, or either, or both. [Ib., § 10.]

ARTICLE 4218*l*. Forfeiture of purchase by non-payment of interest, etc.

If upon the first day of November of any year the interest due on any obligation remains unpaid, the Commissioner of the General Land Office shall indorse on such obligation "Land forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser, and thereupon said land shall thereby be forfeited to the State without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter or any future law; provided, if any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death, and shall be absolved and exempt from the requirement of settlement and residence thereon. And if any purchaser shall fail to reside upon and improve in good faith the land purchased by him, he shall forfeit said land and all payments made thereon to

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the State, in the same manner as for non-payment of interest, and such land shall be again for sale as if no such sale and forfeiture had occurred; provided, that all necessary and temporary absence from such land of such purchaser, for the time of not more than six months in any one year, for the purpose of earning money with which to pay for the land, or for the purpose of schooling his children, shall not work a forfeiture of his title; provided, further, that nothing in this article contained shall be construed to inhibit the State from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the State at the time such forfeiture occurred, or to protect any other right to such land, which suits may be instituted by the Attorney-General or under his discretion, in the proper court of the county in which the land lies or of the county to which such county is attached for judicial purposes; provided, this article shall be printed on the back of receipt. [Ib., § 11.]

ARTICLE 4218*ll*. Same; includes all lands heretofore sold, etc.

If upon the first day of November of any year any portion of the interest due by any person to the State of Texas for lands heretofore sold by the State of Texas, whether said lands be a part of the public domain or shall have been heretofore set apart for the public schools, University, or any of the other various State institutions, has not been paid, it shall be the duty of the Land Commissioner to indorse on the obligation for said lands, "Lands forfeited" and shall cause an entry to that effect to be made on the account kept with such purchaser, and thereupon said land shall thereby be forfeited to the State without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of the existing law, or any future law; provided, the purchaser of said land shall have the right, at any time within six months after such indorsement of "Lands forfeited," to institute a suit in district court of Travis county, Texas, against the Commissioner of the General Land Office, for the purpose of contesting

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such forfeiture and setting aside the same, upon the ground that the facts did not exist, authorizing such forfeiture. but if no such suit has been instituted as above provided. such forfeiture of the Commissioner of the General Land Office shall then become fixed and conclusive; provided, that if any purchaser shall die, or shall have died, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death.

This article is cumulative, and is not intended to deny to the State the right to institute any legal proceedings that may be deemed necessary to secure the purchase-money or possession of the land so sold. And this article is intended to be applicable to all purchases heretofore made under any or all of the various Acts of the Legislature under which land may have been sold by the State.* [Acts 1897, p. 39.]

*See article 4307*e*.

ARTICLE 4218 *lll*. Office forfeitures validated.

All forfeitures of public land, university land, public school land, or land set apart to any of the various state institutions, which have been heretofore sold under any of the various acts of the legislature, and the forfeitures made by the Commissioner of the General Land Office for non-payment of any part of the interest due thereon, and without judicial ascertainment, shall be and the same are hereby in all things made valid; provided, that such purchaser shall have the right at any time within six months after the passage of this article, and not afterward, to institute suit in the district court of Travis county against the Commissioner of the General Land Office to set aside such forfeiture upon ground that the facts did not exist authorizing such forfeiture, and such forfeiture shall be a full liquidation of all claims of the state against such purchaser. [Acts 1897, p. 52.]

ARTICLE 4218*m*. Coupling occupancy under second purchase to cure defects of first.

In all cases where persons have purchased or may hereafter purchase State, School or Asylum lands under any act of the legislature authorizing the sale thereof and re-

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quiring a residence of three years thereon, and said persons have so resided upon said land or may hereafter reside thereon for the period of three years as required by law, and their files have been or may hereafter be canceled and purchases annulled by the Commissioner of the General Land Office on account of conflict with other surveys, said persons shall have the right to purchase other lands of the classes mentioned in this article without being required to reside thereon. Persons desiring to avail themselves of the benefits of this provision shall make satisfactory proof to the Commissioner of the three years' residence under their first purchase. [Acts 1895, p. 63, §12.]

ARTICLE 4218*n*. Vendees of original purchasers protected.

In all cases where any of the lands mentioned in this chapter have been heretofore sold under any law authorizing the sale thereof, and the original purchaser shall have sold or may hereafter sell any part of his purchase in quantities of forty acres or multiples thereof, and the conveyance to his vendee or vendees is filed in the General Land Office after having been duly recorded in the proper County, the commissioner and treasurer shall credit his account with the value of the land sold, and they shall open up new accounts with the original purchaser and such vendee or vendees, and the commissioner of the General Land Office shall patent said land to the owners thereof in quantities of forty acres or multiples thereof; provided, that when any of such land is situated within three miles of a county seat it may be patented in twenty-acre tracts. [Ib., § 13.]

ARTICLE 4218*o*. Cemetery, church and school-house sites.

The Commissioner of the General Land Office is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas or any of the lands mentioned in this chapter as sites for cemeteries, churches or schoolhouses. When the land is desired as a location for a schoolhouse, the patent shall issue to the county judge of the

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proper county and his successors in office in trust for that purpose; and when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the State and not patented, the owner thereof shall execute a deed therefor to the county judge or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and to be filed in the General Land Office, and shall be entitled to credit on his account with the State for the value therefor. Except in case of vacant land the value of the land shall be deposited with the State Treasurer, and in all cases the patent fees shall be paid to the Commissioner of the General Land Office before patent issues. Such land shall be taken from the margin of a tract or section or of a subdivision thereof, as the case may be. [Ib., § 14.]

ARTICLE 4218*p*. Accounts, etc., with purchasers to be kept.

The Commissioner of the General Land Office shall retain in his custody as records of his office all applications, affidavits, obligations and all other papers relating to sales of said lands, and shall cause to be kept accurate accounts with each purchaser. All purchase-money due upon lands, as well as accrued interest, and all other moneys arising from the sales or leases of said lands shall be paid by the purchaser or lessee direct to the treasurer of the State, who shall cause an accurate account to be kept with each purchaser, and who shall execute duplicate receipts for all sums of money paid to him under the provisions of this chapter, one of which receipts shall be delivered to the purchaser or his agent, and the other transmitted to the Commissioner of the General Land Office. [Ib., § 15.]

ARTICLE 4218*q*. Sale of timber on timbered lands, etc.

The Commissioner of the General Land Office shall adopt such regulations for the sale of timber on the timbered lands as may be deemed necessary and judicious. Such timber shall not be sold for less than five dollars per acre, cash, except in such cases as the commissioner may ascertain by definite examinations by an approved agent

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appointed by him for that purpose, to be paid by the purchaser, to be sparsely timbered or containing timber of but little value, in which case he may sell the timber on such sections or part of sections at its proper value; provided, such timber is sold at not less than two dollars per acre. The purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall thereby be forfeited to the State without judicial ascertainment; provided, that all timbered lands from which the timber has been cut and taken off may be placed on the market and sold as agricultural or grazing lands, according to classifications to be made by the land commissioner; provided, that the purchaser or his vendees of any such timber shall have the right to purchase the land upon which such timber so purchased is situated at two dollars per acre, cash, at any time before the expiration of five years from date of purchase of timber under the provisions of this chapter. [Ib., § 16.]

ARTICLE 4218*r*. Lands to be leased; terms, conditions, etc.

The public lands and all lands referred to in the several funds mentioned in this chapter shall be leased by the Commissioner of the General Land Office under the provisions of this chapter, at not less than three cents per acre. All lands classified as agricultural and all lands containing permanenat water thereon shall be leased for a term of five years or less, and all lands classified as pastoral or dry grazing lands shall be leased for a term of not more than ten years, and the rental shall be paid yearly in advance, the first payment to be made at the time the lease contract is entered into. If at the termination of any lease the lands covered thereby are still for lease, the lessee thereof shall have the preference right to again lease such lands theretofore leased by him upon the terms and at the price then fixed by law.

All leases shall be executed under the hand and seal of the Land Commissioner and delivered to the lessee or his duly authorized agent, and such lease shall not take effect

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until the first annual rental is paid and such lease thereof duly filed for record in the clerk's office of the proper county, and it shall not be necessary for the Commissioner to acknowledge such lease contract so signed and delivered; and all leases under the provisions of this chapter may be advertised by the Commissioner in such manner as he may think best, and let to the highest responsible bidder in such quantities and under such regulations as he may think to the best interest of the State not inconsistent with the equities of the occupant. All bids and offers to lease may be rejected by him prior to signing the lease contract, for fraud or collusion or other good and sufficient cause. [Ib., § 17; Amend. 1895, p. 75.]

ARTICLE 4218*s*. Same; lands subject to sale; termination of lease; restrictions as to number of animals to ten acres.

Any person desiring to lease any portion of the lands belonging to any of the funds mentioned in this chapter, shall make application in writing to the Commissioner of the General Land Office, specifying and describing the particular lands he desires to lease, and thereupon, the Commissioner, if satisfied that the lands applied for are not in immediate demand for purposes of actual settlement, shall notify the applicant in writing that his proposition to lease is accepted, and thereupon he shall execute to the lessee in the name and by the authority of the State of Texas a lease of said land for such time as may be agreed upon, and when satisfied that the lessee has paid to the Treasurer of the State the rent for one year in advance, shall deliver said lease to the clerk of the county court of the county in which the land is situated or of the county to which said county is attached for judicial purposes, and it shall be the duty of the clerk to record in a well-bound book, to be kept in his office, open to public inspection, a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease, and the number of years it has to run; and for entering said memorandum the clerk shall be entitled to a fee of twenty-five cents. Upon the payment

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of said fee, the clerk shall deliver the lease to the lessee; and no other record of leases hereafter made shall be required except such memorandum.

All lease contracts heretofore made and not recorded, shall be filed for record with the clerk of the proper county, within three months after this article takes effect, and if any lessee shall fail to have his unrecorded lease so filed for record within said time, the Commissioner of the General Land Office shall disregard such lease, and award the land to any other applicant accompanying his application with the certificate of the clerk that no lease of said land is of record in his office. When any of such leases are filed for record, the clerk shall make the memorandum or abstract above provided for.

All lands which may be leased shall be subject to sale at any time except where otherwise provided herein. This provision in regard to the sale of leased lands shall apply to leases heretofore made, as well as to those hereafter to be made. Any section or part of a section which may be leased, shall not be sold, nor shall the lessee be disturbed in his possession thereof during the term of his lease, in the following cases:

1. When the lessee has actually settled upon such section, or part of a section, and erected thereon his residence and substantial improvements for permanent settlement.

2. When he has placed on such section or part of a section improvements of the value of two hundred dollars.

3. When the aggregate of the land owned by a settler and leased by him does not exceed one section.

Any lands which may be leased south and west of the line herein designated shall not be sold during the term of the lease until otherwise provided by law; provided, the sections leased by any one party are not so selected as to detach sections which are thereby left unleased. Said line begins at the northwest corner of Yoakum county; thence east, to the northeast corner of Kent county; thence south, to the north line of Fisher county; thence west, to the northeast corner of Scurry county; thence south, to the north line of Coke county; thence east, to the north-

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west corner of Runnels county; thence south, to the southwest corner of Runnels county; thence east, to the northwest corner of Concho county; thence south, to the southwest corner of Concho county; thence east, to the southeast corner of Concho county; thence south, to the southwest corner of McCulloch county; thence east, to the southeast corner of McCulloch county; thence south to the southwest corner of San Saba county; thence east, to the northwest corner of Llano county; thence south, to the southeast corner of Mason county; thence west, to the northwest corner of Gillespie county; thence south, to the southwest corner of Gillespie county; thence east, to the northeast corner of Kerr county; thence south, to the southeast corner of Bandera county; thence west, to the northeast corner of Uvalde county; thence south, to the southwest corner of Medina county; thence east, to the northeast corner of Frio county; thence south, to the northeast corner of La Salle county; thence east, to the northeast corner of McMullen county; thence south, to the southeast corner of McMullen county; thence east, to the Nueces river; thence down said stream to its mouth: Except in that portion of the State south and west of the above delineated line, any actual settler shall have the right to lease within a radius of five miles of the land occupied by him, not exceeding three sections of the land held by a leaseholder who is leasing more than ten sections from the State, but shall not be allowed thereby to reduce the large leasehold to less than ten sections.

In all cases where the lease is terminated under any of the provisions of this chapter before the expiration of the term of the lease, the lessee shall have a *pro rata* credit upon his next year's rent, or the money refunded to him by the Treasurer, as he may elect. On the expiration of his lease, or its termination under any provision of law, the lessee shall have the right for the period of sixty days to remove any or all improvements he shall have placed upon the leased premises.

No purchaser or other person than the lessee shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle, or in lieu thereof

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four head of sheep or goats, for every ten acres of land so purchased, owned or controlled by him and uninclosed. Each violation of the provisions of this chapter, which restrict the number of stock which may be turned loose in such inclosure, shall be an offense, and the offender, on conviction, shall be punished by a fine of one dollar for each head of stock he may so turn loose, and each thirty days' violation of the provisions of this article shall constitute a separate offense. [Ib., § 18; amended Acts 1897, p. 184.]

ARTICLE 4218*t*. Same; application for conditional lease.

Any person desiring to lease any portion of the lands aforesaid on which no permanent water supply exists, shall notify the Commissioner of the General Land Office in writing that he desires to lease lands, specifying and describing them, provided be can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtained; he shall also make and file with the Commissioner of the General Land Office his bond, with good and sufficient personal security in a sum equal to one year's rental of the quantity of land applied for, payable to the State of Texas, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein, and thereupon the Commissioner shall for such ninety days withhold the lands thus designated from lease to any other person; within or at the expiration of said ninety days and annually thereafter such applicant to lease shall pay to the State of Texas, in advance, one years rental of the land applied for by him, on satisfactory proof of which payment the Commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially and attested by the seal of the Land Office, together with which he shall deliver up the bond of said lessee, marked "Satisfied."

If the said lessee shall fail to apply for his lease and make the payment aforesaid within said ninety days, and shall also within said ninety days fail to make proof to the satisfaction of the Commissioner of the General Land

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Office within that time that he has in good faith and diligently used proper means and expended proper efforts to secure a water supply on such land and failed, then and in that case the Commissioner shall mark said bond "Forfeited," and shall deliver the same to the Attorney-General of the State, who shall at once cause the said bond to be sued upon and collected; and such collection shall become a part of the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the State. Proof satisfactory to the Commissioner of the General Land Office that proper, suitable and diligent effort had been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibility therein, and it shall be marked "Satisfied" by said Commissioner and delivered to the principal therein.

No lease of less than four sections of unwatered pasture lands shall be made unless such number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article shall, at the expiration of their lease contract, have the right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days' written notice to the Commissioner, as provided in the preceding article. [Ib., § 19.]

NOTE.—Section 20 of the Act of April 4, 1895, p. 63, was repealed by the Act of April 16, 1895, p. 75.—Codifiers of 1895.

ARTICLE 4218*u*. Payment of rents, how made.

All lessees shall pay the annual rents due for leased lands directly to the Treasurer of the State, who shall execute receipts in duplicate for each payment made by any lessee, one of which receipts shall be delivered to the lessee and the other transmitted to the Commissioner of the General Land Office. The Treasurer shall cause to be kept an accurate account with each lessee; and the Commissioner

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of the General Land Office shall file in his office all applications and other papers relating to leases, and keep a record of all leases made, which papers shall constitute a part of the records of his office. [Ib., § 21.]

ARTICLE 4218*v*. Leases, how canceled for non-payment of rents.

If any lessee shall fail to pay the annual rent due in advance for any year within sixty days after such rents shall become due, the Commmissioner of the General Land Office may declare such lease canceled by a writing under his hand and seal of office, which writing shall be filed with the other papers relating to such lease, and thereupon such lease shall immediately terminate, and the lands so leased shall become subject to purchase or lease under the provisions of this chapter. Such lease shall not be made to original lessees until all arrears are fully paid. During the continuance of all leases, and after forfeiture, the State shall have a lien upon all property owned by the lessee upon the leased premises to secure the payment of all rents due, which lien shall be superior to all other liens whatsoever; and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease. [Ib., § 22.]

ARTICLE 4218*w*. Lessees privileged to purchase; personal property in improvements.

Lessees shall have the right at any time to purchase their leased lands, subject to the limitations as to quantity provided by this chapter, and at the price and on the conditions herein provided, without reference to any improvements made on such lands by such lessees; and all improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same. [Ib., § 23.]

ARTICLE 4218*x*. Suits to recover lands illegally occupied.

If the Governor shall at any time be credibly informed that any portion of the public lands or the lands belonging

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to any of the several funds named in this chapter have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the Attorney-General to institute suit in the name of the State for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and when it is over that sum the fee shall be ten per cent., to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosures and fences; and such damages shall not be for a less sum than the amount of all the leases during such occupancy.

For the recovery by the State of all lands sold under the provisions of this or former laws which have been or may hereafter be forfeited to the State for any reason, and for the recovery of any money due the states [State?] on leases made under this or former laws, and for the recovery of damages for the unlawful use and occupancy of such lands, as provided in this article, or any former laws, jurisdiction is expressly conferred on the courts of Travis county having jurisdiction thereof under the constitution concurrently with courts of the districts in which the land is situated, and all such suits shall be instituted by the Attorney General or under his direction.

In suits provided for in this article, the court shall issue a writ of sequestration directed to any sheriff of the State, commanding and requiring such officer to take such land and all property thereon belonging to the person or persons so unlawfully occupying said lands into his actual custody, and hold the same subject to further orders of the court, and the State shall not be required to give bond. Such writ of sequestration may be executed by any sheriff of the State into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ.

The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law, and such cases shall have precedence on the docket and stand for trial before all other cases; and in case judgment is recovered by the State in such suit the court shall order such inclosure

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or fences to be removed, and shall tax the costs of the suit against the defendant, and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant.

Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the State shall not be required to give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases.

If any person shall make a lease contract, and after the same is inclosed by fence shall for any cause decide not to continue payment of his lease, either in whole or in part, he shall give public notice by publication in any local paper having the largest circulation, for at least sixty days before the time in which his next annual payment shall become due, that he will not continue his lease after the year for which payment is made, and shall also state the number and block of the land which he will not lease inside his inclosure, if he only intends to surrender a part of his lease, and shall post and shall keep posted for said sixty days notice on all gates of his pasture of such intention; then, and then only, he shall not be subject to the suit nor liable for the damages provided for in this article. [Ib., § 24; Amend. 1895, p. 75.]

ARTICLE 4218y. Certain lands withheld from lease.

The Commissioner of the General Land Office may withhold from lease any agricultural lands necessary for the purpose of settlement, and no agricultural lands shall be leased, if, in the judgment of the Commissioner, they may be in immediate demand for settlement, but such lands shall be held for settlement, and sold to actual settlers only, under the provisions of this chapter; and all sections and fractions of sections, in all counties organized prior to the first day of January, 1875, except El Paso, Presidio and Pecos counties, which sections are isolated and detached from other public lands, may be sold to any purchaser, except to a corporation, without actual settlement. at one dollar per acre, upon the same terms as other public lands are sold under the provisions of this chapter. [Ib., § 26; amended, Acts 1897, p. 184.]

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ARTICLE 4218*s*. Certain illegal sales made valid.

All sales of public school, university, and the several asylum lands which were sold as isolated and detached lands under Section 22, Chapter 99 of the Acts of the Legislature of the State of Texas of 1887, and amendments thereto, which were in fact not isolated and detached, as construed by the Supreme Court, where the original sales have not been canceled and the lands resold, be and the same are in all things hereby legalized and made valid in all cases where such sales would have been valid if the lands so sold had in fact been isolated and detached; provided, that when applications have been made for the purchase of any such lands, in advance of placing of the same on the market again, it shall not have the effect of a sale of such lands, nor of requiring the Commissioner of the General Land Office to award such lands to such applicants. [Acts 1897, p. 160.]

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GENERAL LAWS OF TEXAS, 30TH LEGISLATURE, PAGE 495, SEC. 6f, YEAR 1907. MINERALS, GAYULE AND LECHUGUILLA RESERVED.

SECTION 6f. The land which is now or may hereafter be classed as mineral, may be sold for agricultural or grazing purposes, but all sales of such land shall be upon the express condition that the minerals, shall be and are reserved to the fund to which the land belongs, and such reservation shall be stated in all applications to purchase; provided, should any person who has no authority or right to do so cut or remove any mineral, gayule or lechuguilla from the land belonging to the public free school fund, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten dollars nor more than one thousand dollars and in addition thereto judgment shall be rendered against the defendant in behalf of the State in a sum of money equal to the value of the substance so cut or removed. which shall be collected as under execution, and when collected the money shall be remitted to the State Treasurer and by him credited to the fund to which the land belongs. The Commissioner shall adopt all the necessary rules and regulations for the execution of the several provisions of this Act.

SECTION 2. Article 5407 of the Revised Civil Statutes of 1911 shall be so amended as to hereafter read as follows:

Article 5407. The Commissioner of the General Land Office shall from time to time as the public interest may require, classify or reclassify, value or revalue, any of the lands included in this Act, designating the same as agricultural, grazing or timber, or a combination of said classifications, according to the facts in the particular case, and when entry of the classification and the appraisement is made on the records of the General Land Office, no further action on the part of the Commissioner, nor notice to the County Clerk shall be required to give effect thereto. No land classed as agricultural shall be sold for less than one dollar and fifty cents per acre and no land classed as grazing shall be sold for less than one dollar per acre. The land included in this Act shall be sold with the reservation

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of the oil, gas, coal and all other minerals that may be therein to the fund to which the land belongs and all applications shall so state. Timber on land shall be sold for cash at its fair market value. The Commissioner shall notify the clerk of the proper county of the sale of each tract, giving the name and address of the purchaser together with the price of the land. When informed of the sale of any land the clerk shall enter on his books opposite the description of the land sold, the name of the purchaser and the date sold, and the notice of such sale and the books of record and entry shall be considered public records, and be open to public inspection, and it is hereby made the duty of the county clerk to exhibit the said records to any person who shall apply therefor.

REVISED STATUTES, 1911, ARTICLES 5396 TO 5400 INCLUSIVE.

ARTICLE 5396. Surplus segregated from public domain, when.

Surveys and blocks of surveys made by virtue of valid alternate scrip be and the same are hereby declared to segregate from the mass of the public domain all land embraced in said surveys, or blocks of surveys, as evidenced by the corners and lines of same, or by calls for natural or artificial objects, or the calls for the corners and boundaries of other surveys, or by the maps and other records in the General Land Office.

ARTICLE 5397. Belong to public free school fund.—

All excess in said surveys are donated and declared to belong to the public free school fund of the State; and it shall be the duty of the Commissioner of the General Land Office to ascertain, by any and all means practicable, the existence and extent of such excesses, and to provide for and direct such surveys, or corrected surveys, as may be necessary for this purpose; provided, that, where such surveys were made in blocks of two or more surveys, said respective surveys shall remain on the ground consecutively as placed therein, as shown by the maps, sketches and field notes originally returned to the General Land

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Office; provided, that the person who has already purchased, or who may hereafter purchase from the State the particular section to which surplus shall by such resurvey be made contiguous, shall have the prior right for the period of six months after such resurvey shall have been made, in which to purchase such excess on the same terms on which such purchaser has already bought or may buy. (Id. Sec. 2.)

ARTICLE 5398. Excess to be Added—All such surveys which, under the direction of the Commissioner of the General Land Office have been or may be hereafter corrected, so that all excess in the original surveys shall be placed in the surveys belonging to the public free schools, are hereby validated, and the action of the Commissioner is hereby ratified. And he is directed and authorized to issue patents to the owners thereof, and to sell such surveys belonging to the public free schools, securing to the state the benefit of such excesses. (Id. Sec. 3.)

ARTICLE 5399. Shall Not Affect—The provisions of this law shall not apply to nor affect the rights of the third persons heretofore acquired in good faith. (Id. Sec. 4.)

ARTICLE 5400. Conflicts—Nothing in the preceding four articles shall apply to any lands for which patents have been issued. (Id. Sec. 5.)

REPORT OF ATTORNEY GENERAL, 1914-1916, PAGE 811.

NAVIGABLE WATERS—PUBLIC WATERS. ARTICLE 5338, REVISED CIVIL STATUTES OF 1911.

A stream maintains an average width of thirty feet, within the meaning of Article 5338, Revised Statutes of 1911, when the water in the stream, at its ordinary stage, is thirty feet in width.

A survey which crosses a stream, navigable under the statute at the time the survey was made, does not deprive the State of title to the bed of the stream.

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December 1, 1915.

Hon. M. W. Burch, County Attorney, Decatur, Texas.

Dear Sir: In a recent letter you refer to Article 5338 R. S., of 1911, which defines as navigable all streams in so far as they retain an average width of thirty feet. You desire to know how such width is to be determined and measured.

The article referred to is as follows:

"All lands surveyed for individuals, lying on navigable watercourses, shall front one-half of the square on the watercourse and the line running at right angles with the general course of the stream, if circumstances of lines previously surveyed under the laws permit; and all streams, so far as they retain an average width of thirty feet, shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey."

This article was construed by Judge Brown in the case of City of Austin vs. Hall, 93 Texas 591. The opinion in that case shows that the article is made up of two distinct parts. The first part undertakes to specify the manner in which surveys shall be made on navigable water courses. The opinion of the Court, in the case referred to, points out that the first portion of the article relates to waters which are navigable "according to the general rule of decisions on that subject," and that the purpose of this portion is to retain in the State the title to the beds of all streams navigable according to the general rule of decisions. The second portion of the article arbitrarily classifies as navigable streams, in addition to those navigable according to the general rule, those which detain a width of thirty feet. This construction of the article becomes important to a proper understanding of what streams in Texas are navigable under the law and therefore public streams. The general rule in the United States is that those streams are navigable which have the capacity of use by the public for the purpose of transportation, commerce, etc., and it is not necessary that streams, to be navigable, have such capacity at all times, it being sufficient if they contain sufficient

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water to serve such useful purposes during any considerable portion of each year. See

Jones vs. Johnson, 25 S. W. 650.

Orange Lumber Co. vs. Thompson, 113 S. W. 563; 126 S. W. 604.

Burr's Ferry vs. Allen, 149 S. W. 358; 165 S. W. 878.

State vs. W. Tenn. Land Co., 127 Tenn. 575; 158 S. W. 746.

Lamprey vs. State, 52 Minn. 181; 18 L. R. A. 670.

The English rule also applies in this country, that is, that a stream is navigable and a public water when it is within the ebb and flow of the tide. See

Bland vs. Smith, 43 S. W. 49.

Roseborough vs. Picton, 34 S. W. 791; 43 S. W. 1033.

What we desire to emphasize at this point is, that not only are those streams, arbitrarily so classified because they maintain a width of thirty feet, navigable and public, but that also all streams which are navigable in fact, as hereinbefore defined, and all streams within the ebb and flow of the tide, are navigable and public streams in Texas, and under the statute above referred to the title to the beds of such streams has been retained by the State.

It is generally true that the question whether the bed of a particular stream in the State has been reserved to the State or not can be determined by an examination of the field notes of the grants bordering on the stream. If these field notes make the margin of the water for the edge of the stream or water, or the bank of the stream, the boundary or otherwise show a purpose to exclude the bed of the stream, such bed will remain the property of the State, regardless of the width or navigability of the stream. See

Dutton vs. Vierling, 152 S. W. 450.

Stewart vs. White, 128 Ala. 202; 55 L. R. A. 211.

Hardin vs. Jordan, 140 U. S. 371, 391.

5 Cyc., page 905.

Farnum on Water and Water Rights, Secs. 856-8.

If, however, the grants bordering on the stream make the stream itself the boundary and not the edge or bank

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of the stream it then becomes important to determine whether the stream was navigable, within the meaning of our laws, at the time the survey was made, for, if navigable, the survey would include no part of the bed of the stream, and, if not navigable, it would go to its center. The statute undertakes to provide an easy rule for the determination of this question by specifying the width of thirty feet.

We have not found any case in Texas which directly decides the method of measuring the stream in order to determine whether or not it is thirty feet in width. The question was raised in the case of Bunnell vs. Sugg (135 S. W. 701), but the Court of Civil Appeals expressly declines to pass upon the question.

Judge Brown, in the case of City of Austin vs. Hall, supra, in discussing Article 5538, by the use of the words "to the water line," indicates that, in his opinion, the purpose of this statute is to give the individual the title to the water line.

The opinion of the Court in the case of Denny vs. Cotton (22 S. W. 122), indicates that the owner of a survey on a navigable stream in Texas owns to the low water mark.

It is shown in Section 55 of Farnum on "Water and Water Rights" that the courts of most of the states fix the line between the State and the individual owner of land on navigable streams at the low water mark.

An examination of the definition of the words "low water mark" in "Words and Phrases," shows that the words are ordinarily used as the contrary to the words "high water mark"; that they do not mean the mark in case of a drought, but the line at which the water usually stands when free from disturbing causes.

Article 5338 provides that surveys on navigable water courses shall front one-half of the square on the water course. Because of the use of this language, and the authorities above referred to, we are of the opinion that in order to determine the width of a stream under this statute

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the width of the water in ordinary seasons should be measured, that is, the water in its ordinary condition when free from disturbing causes.

Whether the bed of a stream remains the property of the State or was included in the surveys on its banks or not depends not on its width or navigability at this time, but upon its width or navigability at the time the surveys were made. The fact that the surveys, by their field notes, show a purpose not to include the bed of the stream would strongly tend to show that at the time the surveys were made the stream was thirty feet or more in width, or navigable in fact, and so reserved to the State.

You desire further to know whether the fact that a grant crosses a stream of the State conveys the title to the bed of the stream, regardless of whether the stream is navigable or not. We advise you that such grant could not convey the bed of the stream in the face of the statute above referred to. The grant would not be void but would pass title to the land exclusive of the bed of the stream. See Bunnell vs. Sugg (135 S. W. 701).

It may, however, be difficult to determine the width and navigability of the stream at the time the grant was made, and the fact that the grant crosses the stream will tend to show that the stream was not navigable within the meaning of the law at the time the grant was made.

Yours very truly,

G. B. SMEDLEY,
Assistant Attorney General.

BOUNDARIES—WATER COURSES.
DISCUSSION OF THE BOUNDARY BETWEEN OKLAHOMA AND TEXAS ALONG THE RED RIVER.

The bank of a river is the bank which confines it in time of ordinary high water rather than a bluff remote from the channel which confines the water in case of unusual floods.

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September 2, 1918.

Honorable J. T. Robison, Commissioner, General Land Office, Austin, Texas.

DEAR SIR: In your letter of August 30th to the Attorney General you request advice with reference to the boundary between Oklahoma and Texas along a portion of the Red River in or adjoining Wichita County. It appears that in the particular location the water of the river is confined in normal times by a well defined but low bank on the south, that a few hundred yards back from this low bank (in some places, so I am informed, as far as 1400 varas) is a high bluff by which the waters of the river are confined in case of unusually high water or floods; that the land between the low bank and the high bluff is "fine earth covered with grass of an undulated topography, sometimes sloping toward the channel along which the water flows," that on this land "grass and trees grow, grazing is good, and occasionally this area is inhabited by people who have their homes established between the high bank and the waters edge as it flows along the channel." The question presented is whether the land above referred to is within Texas or Oklahoma. I understand that certain persons in Oklahoma are contending that the south bank of the Red River is the boundary between Texas and Oklahoma. This contention is perhaps based upon the language used in the decree of the Supreme Court of the United States in the case of United States vs. Texas, 162 U. S., 1, 91, by which it was adjudged that Greer County was not a part of the State of Texas and in which decree the southern boundary of Greer County was described as following the south bank of the Red River. In that case, however, there was no controversy as to the title of the bed of the river, the question being whether the south fork or the north fork of the river constituted the boundary.

It has been generally conceded that the boundary between Texas and Oklahoma is fixed by the terms of the Treaty of 1819 between the United States and Spain. By Section 3 of that Treaty the boundary between the two countries was thus defined:

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"The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river to the 32nd degree latitude; thence, by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or *Red River; then following the course of the Rio Roxo, westward, to the degree of longitude 100 west from London and 23 from Washington;* then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence by that parallel of latitude, to the South Sea."

The Courts of this State have held that the boundary was fixed by the Treaty above referred to at the middle of the river. The Texas Court of Appeals so held in the case of Spears vs. State, 8 Texas Ct. of Appeals, 467, and the Supreme Court of Texas, as late as 1905, so held expressly approving the judgment and opinion of the Court of Appeals in the case above referred to. See Parsons vs. Hunt, 98 Texas, 420, 424. However, for the purpose of determining the ownership of the land between the low banks and the high bluffs referred to in your letter, it is not necessary to discuss the correctness of the opinions of the Texas Courts. At most it can only be contended that the Treaty in effect designated the south bank of the river as the boundary. Granting for the argument that such was the effect of the Treaty, it is our opinion that the land in question is within the State of Texas for two reasons which will be briefly discussed.

First, it is a general rule that when the bank of a stream is described as the boundary the title will extend to the margin of the stream unless there is something to limit it to the top of the bank. See Farnham on Water Rights, Section 857, and the cases there cited. See also:

Halsey vs. McCormick, 13 N. Y., 296.

Yates vs. Van DeBogert, 56 N. Y., 526.

Lamb vs. Ricketts, 11 Ohio, 311.

Flemming vs. Kenney, 27 Ky., 155.

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There is nothing in the Treaty showing a purpose to make the top of the river bank or the top of the highest river bank the boundary. On the contrary, the language of the Treaty, which has been quoted, makes no reference to the bank, but describes the east boundary as running to the river and the north boundary as following the course of the river. This language, if given the construction most favorable to Oklahoma, means, under the rule above referred to, that the boundary of Texas extends as far north as the margin of the river which is the edge of the water under ordinary conditions or the line to which the water usually stands when free from disturbing causes. Such line has also been described as the water line without reference to the extraordinary freshets of winter or spring or the extreme drouths of summer or autumn.

This rule is sustained by the opinion of the Supreme Court of the United States in the case of State of Alabama vs. State of Georgia, 13 Howard, 505, in which was involved the boundary between Georgia and Alabama along the Chattahoochee river. There the boundary had been defined by a contact of cession between Georgia and the United States as running up the river and "along the western bank thereof." The Court fixed the boundary as the water line of the acclivity of the western bank. That is at the water line without reference to extraordinary freshets or unusual drouths. The language used by the Court in fixing this boundary was as follows:

"We also agree and decide that this language implies that there is ownership of soil and jurisdiction in Georgia in the bed of the river Chattahoochee, and that the bed of the river is that portion of its soil *which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average* and mean stage during the entire year, without reference *to the extraordinary freshets of the winter or spring, or the extreme drought of the summer or autumn.*

"The western line of the cession on the Chattahoochee river must be traced on the water-line of the acclivity of the western bank, and along that bank where that is de-

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fined; and in such places on the river where the western bank is not defined, it must be continued up the river on the line of its bed, as that is expressed in the conclusion of the preceding paragraph of this opinion."

The second reason for our opinion that the land in question is within the State of Texas, is, that the ordinary meaning of the word "bank" is the elevation of land which confines the river at ordinary high water, or the elevated land between ordinary high and ordinary low water. See Daniels vs. Cheshire, R. Co. 20, N. H. 85.

Stone vs. City of Augusta, 46 Me., 127.

Johnson vs. Knott, 13 Oregon, 308; 10 Pacific, 418.

Sundial Ranch vs. May Land Co. Oregon, 205; 119 Pac., 758.

Houghton vs. Chicago, etc., Ry. Co., 47 Iowa, 370.

In the language of some of the authorities, "the banks of a river or stream are understood to be that which contains it in its ordinary state of high water." See Minor's heirs vs. City of N. O., 115, L. A., 301; 38 So., 999.

Ensley Development Co. vs. Powell, 147 Ala., 300; 40 So., 137.

The low bank on the south side of the Red River which confines the river in its ordinary state of high water rather than the high bluffs to which the water of the river extends in case of unusual floods, is, in our opinion, the south bank of the river.

The banks of a stream are immediately adjacent to its bed. The banks confine the waters within the bed. The land referred to in your letter cannot be considered a part of the bed of the river, particularly in view of the character of its soil, its vegetation, its use and its extent.

For the reasons above set out, and as we understand the facts, we advise you that the land referred to in your letter between the low banks which confine the stream in its ordinary condition, and the high bluffs is within the State of Texas.

Very truly,

G. B. SMEDLEY,
Assistant Attorney General.

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REPORT OF ATTORNEY GENERAL, 1919-20, PAGE 266.

OIL AND GAS—UNIVERSITY LANDS—LEASE—RENTAL—COMBINING OR GROUPING PERMITS.

University lands are not embraced in the provisions of Chapter 81 of the Published Acts of the First and Second Called Sessions of the Thirty-sixth Legislature, except to the extent provided for in Section 17 of that Act.

One who leases University lands from the State for oil and gas production purposes is liable to the State for a sum of money equal to two dollars an acre for all lands embraced in such lease, same to be paid when such lease is executed, and for a like sum annually thereafter, payable in advance, so long as such lease remains in effect.

The combining or grouping of permits on University lands with permits on other lands is not authorized.

REFERENCES.

Article 2634, Revised Civil Statutes, 1911;

Chapter 83, Published Acts, Regular Session, Thirty-fifth Legislature.

Chapter 19, Published Acts, First and Second Called Sessions, Thirty-sixth Legislature;

Chapter 81, Published Acts, First and Second Called Sessions, Thirty-sixth Legislature.

AUSTIN, TEXAS, July 15, 1920.

Hon. J. T. Robison, Commissioner, General Land Office, Austin, Texas.

DEAR SIR: The Attorney General is in receipt of yours of the 2nd ult. requesting a ruling from him on the following questions:

"It has become important and quite urgent for this Department to advise whether or not one who develops oil and gas in University lands, and applies for a lease thereon, would be under the necessity of paying two dollars per acre for the lease, as provided for in Act of 1917, or whether one would be relieved of payment of the two dollars per acre as provided in Act of 1919, Chapter 81.

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"Again, can University lands be combined or grouped with school land, as provided for grouping in the aforesaid Chapter 81, Acts of 1919?"

Since there are no other provisions of our law in point, we assume that your first question is based upon the theory or supposition that Section 14 of Chapter 81 of the Published Acts of the First and Second Called Sessions of the Thirty-sixth Legislature, hereafter referred to as the Act of 1919, is applicable to University lands. Otherwise such lands are clearly embraced in the provisions of Section 7 of Chapter 83 of the Published Acts of the Regular Session of the Thirty-fifth Legislature, hereafter referred to as the Act of 1917.

Section 7 of the Act of 1917 reads as follows:

"If at any time within the life of a permit one should develop petroleum or natural gas in commercial quantities the owner or manager shall file in the General Land Office a statement of such development within thirty days thereafter, and thereupon the owner of the permit shall have the right to lease the area included in the permit upon the following conditions:

"1. An application and a first payment of two dollars per acre for a lease of the area included in the permit shall be made to the Commissioner of the General Land Office within thirty days after the discovery of petroleum or natural gas in commercial quantities.

"2. Upon payment of two dollars per acre for each acre in the permit a lease shall be issued for a term of ten years or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and annually after the expiration of the first year after the date of the lease the sum of two dollars per acre shall be paid during the life of the lease, and in addition thereto the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises.

"3. The royalties shall be paid to the State through the Commissioner of the General Land Office at Austin, monthly during the life of the lease. All payments shall

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be accompanied by the sworn statement of the owner or manager or other authorized agent showing the amount produced since the last report and the market value of the output and a copy of all pipe receipts, tank receipts, gauge of all tanks into which petroleum may have been run, or other checks and memoranda of amount put out or into pipe lines or tanks or pools. The books and accounts, the receipts and discharges of all pipe lines, tanks and pools and gas lines and gas pipes and all other matters pertaining to the production, transportation and marketing of the output shall be open to the examination and inspection at all times by the Commissioner of the General Land Office or his representative or any other person authorized by the Governor or Attorney General to represent the State. The value of any unpaid royalty and any sum due the State under this Act upon any lease shall become as prior lien upon all production produced upon the leased areas and the improvements situated thereon to secure the payment of any royalty and any sum due the State arising under the operation of any portion of this Act.

"4. The permit or lease shall contain the terms upon which it is issued, including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the Commissioner may deem important to the rights of the applicant or the State."

Section 14 of the Act of 1919 reads as follows:

"If oil or gas should be produced in paying quantities upon any land included in this Act, the owner of the permit shall report the development to the Commissioner of the General Land Office within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination or permits may desire to be leased and accompany the application with a log of the well or wells, and the correctness of the lag shall be sworn to by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals."

Without setting out our reasons for so holding, not deeming it necessary to do so in view of the evident pur-

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port and purpose of the Act, and especially by reason of Section 17 of the Act, it is our opinion that none of the provisions of the Act of 1919 were intended to apply to University lands otherwise than to the extent provided for by said Section 17. That section reads as follows:

"The provisions of this Act, so far as they relate to a combination of permits and extensions of time for beginning development and time for development, shall apply to permits heretofore issued and those hereafter issued upon University land."

What is the purpose of this section, and what is its effect as to University lands? Since in our opinion this Act, and therefore Section 14 of the Act, does not include University lands, nor permits on such lands, otherwise than to the extent provided for by this section, that is, since but for this section University lands, as well as permits on such lands, would not have been embraced in any of the provisions of the Act, it follows that this section must have been inserted in the Act for the purpose of bringing these lands, or permits on them, within those provisions of the Act mentioned in it. This being true, it follows that it is only those provisions of the Act that are mentioned in this section that were intended to be applicable to University lands, or to permits on such lands. But if it be conceded that without this section other provisions of the Act would be applicable to University lands, which we do not concede and which we do not believe could be seriously asserted, then the effect of Section 17 would be to limit the Act in its application of these lands, or to permits on them, to those provisions named in said section. This theory would bring us to the same result as the other. It is only upon one or the other of these theories that the presence of this section in the Act can be intelligently accounted for. Otherwise it would serve no purpose and could be given no effect. This being true, the question to be determined is whether or not, as under the first theory, this section brings University lands, or permits on such lands, within the provisions of the Section 14 of the Act, or, as under the other theory, whether or not it excludes such lands from the provisions of said Section 14. As either theory will bring us to the same result, we make no distinction between them in our discussion.

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It will be noted that Section 17 extends or limits certain provisions of the Act to permits on University lands; not to University lands as such, but to permits on such lands. What are these provisions? There are three. Those that apply to (1) a combination of permits, (2) the extension of time for beginning development, and (3) time for development. Section 14 clearly contains no provisions pertaining to the extension of time for beginning or completing development and hence that part of Section 17 relating to extensions of time cannot have the effect of bringing permits on University lands within any of the provisions of that section. It contains no provisions pertaining to extensions of time and hence no such provisions that could be extended to such permits either by Section 17 or otherwise.

The only other provisions of the Act that Section 17 seeks to extend to permits on University lands are those relating to a combination of permits. Does that part of Section 17 pertaining to a combination of permits have the effect of extending to permits, or to a combination of permits, on University lands any of the provisions of Section 14? We think not. Section 14 deals with the leasing of lands included in the Act on which oil or gas may have been developed in paying quantities, and not with permits. It makes it the duty of one holding a permit or a combination of permits on land included in the Act to make certain reports and to apply for a lease on such lands within thirty days from the date on which oil or gas may be produced on such land in paying quantities, and in such case directs the issuance of a lease on such land without the payment of any additional sum of money. There is nothing in this section applicable to permits or to a combination of permits as such and hence nothing in it that could be extended to permits on University or other lands, either by Section 17 or otherwise. Its provisions relate to certain lands, that is, to lands included in the Act, and not to permits or to a combination of permits as such on those or any other lands. It is true that Section 14 uses the expression "a combination of permits" but clearly only for the purpose of identifying the person and land to which the section relates, that is, such of the lands included in the Act as may have oil or gas produced on them in paying quantities, and the person or persons who may be

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the owner or owners of the permit or combination of permits on such lands. These provisions have reference to the land and persons mentioned and not to permits, while, as has been stated, Section 17 declares certain provisions of the Act relating to a combination of permits to be applicable to permits on University lands. Since Section 17 extends only to permits on University lands certain provisions of the Act applicable to a combination of permits, and since Section 14 contains no provisions applicable to permits of any kind, it follows that the former does not and cannot extend the provisions of the latter to University lands.

As to your second question, we have reached the conclusion that the law does not authorize permits on University lands to be grouped or combined with permits on other lands. Section 12 of the Act of 1919 authorizes the grouping or combining of permits on lands included in that Act, that is, on surveyed Public Free School and Asylum lands sold by the State with a mineral classification or reservation, and by Section 17 of the Act the same is authorized as to permits on University lands, but we know of no law authorizing the grouping or combining of permits on other lands. Since, therefore, there is no law authorizing the grouping or combining of permits on other lands, that is, if combining of permits on lands included in that Act, that is, permits on other lands may not be grouped or combined, it follows that the grouping or combining of permits on University lands with permits on such other lands is not authorized.

But may not permits on University lands be grouped or combined with permits on such Public Free School and Asylum lands? We think not. One reason is that the law does not expressly authorize it. Section 12 of the Act of 1919 authorizes permits on lands included in that Act to be grouped or combined with other permits on such lands. Section 12 of the Act extends this provision to permits on University lands, that is, authorizes permits on University lands to be grouped or combined with permits on any other lands. Another reason is that certain provisions of the law applicable to permits on such Public Free School and Asylum lands are not applicable to permits on University lands, and certain provisions of the law applicable to permits on

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University lands are not applicable to permits on such Public Free School and Asylum lands. Still another reason is that the leasing of these respective lands is required to be upon different terms and conditions. Hence to combine or group permits on University lands with permits on Public Free School and Asylum lands, or with other lands, would render confusing if not impossible of application those provisions of our laws applicable to permits upon and to the leasing of these respective lands, as well as to operations under such leases.

We are of the opinion, therefore, and you are so advised:

FIRST: That one leasing University lands from the State for oil and gas production purposes is required to pay therefor to the State a sum of money equal to two dollars an acre upon the area to be included in such lease at the time the lease is executed, and a like sum annually thereafter upon all such lands as remain within and subject to such lease.

SECOND: That the combining or grouping of permits on University lands with permits on other lands is not authoried.

It will be understood, of course, that this ruling has to do with the combining or grouping of permits as provided for by said Act of 1919 and is not intended to have any bearing upon those provisions of the law that relate to the sale of permits or leases.

Very truly yours,

W. W. CAVES,

Assistant Attorney General.

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OIL & GAS LAWS OF TEXAS

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Laws of Mines and Mining

GENERAL LAWS, 18th LEGISLATURE, PAGE 100. AN ACT TO PROVIDE FOR THE DISPOSITION OF THE MINERALS IN THE PUBLIC SCHOOL, UNIVERSITY, ASYLUM AND PUBLIC LANDS OF THE STATE OF TEXAS.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That all minerals in the Public School, University, Asylum and public lands of the State of Texas be and the same are reserved from the operation of the laws for the sale of such lands and shall be used and disposed of for the benefit of the respective funds for which said lands are now set apart as hereinafter prescribed.

SECTION 2. The State Land Board shall have the control and management of the disposition and use of said minerals and shall provide such rules and regulations therefor as to them may seem best within the provisions of this act.

SECTION 3. When a prospector or miner shall discover upon any of said lands any mine of coal, iron, tin, copper, lead, silver or gold he shall immediately stake the same in its apparent extent not to exceed in size three hundred feet one way by fifteen hundred feet the other way, the corners to be marked by distinct stone land marks and shall within forty days thereafter file a description of said mine, the county in which it is situated, the number of survey, the company or individual to whom the same was issued, and such other description as is practicable in the clerk's office of the county where the land lies or if an unorganized county, then in the county to which the same is attached for surveying purposes which description shall be verified by an affidavit of the fact that he is the discoverer of said mine, and that he intends to fully prospect the same and comply with the law pertaining to the same in good faith; and shall be registered in the record of deeds. He shall then have the privilege of selling the rights he may have acquired in said mine—

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provided that he or his assigns shall within ninety days after the filing of such description have said mine surveyed and shall file a copy of said survey together with specimens of the ore taken therefrom with the State Land Board at Austin.

SECTION 4. After the filing of such survey and specimens, the discoverer or his assigns shall work said mine for his own benefit and for the benefit of the fund to which said mine belongs, said fund to receive five per centum of the gross receipts from said mine to be paid and received in such manner and under such regulations as the Land Board may prescribe by general rules applying alike to all such cases—provided that the mines shall be worked subject to such rules and regulations as the Land Board may prescribe, and which may be from time to time, changed, and they may by regulation prescribe such conditions of forfeiture of the rights hereby conferred as they may think proper, and on their violation declare such forfeiture—provided further that any one taking up a mining claim of the dimensions herein provided for shall do at least two hundred dollars worth of work per annum on the same, and furnish annual proof of the same to the Land Board. Any one failing to comply with this provision shall forfeit his interest and it shall be subject to entry by any other person and it shall require no judicial forfeiture.

SECTION 5. The filing and registration of the description hereinbefore provided to be filed with the county clerk shall be constructive notice of claim. But all persons who have heretofore discovered and worked mines on said lines shall have a prior right for ninety days after the passage of this act in which to comply with this law as discoverer.

SECTION 6. This being a matter of great general interest and importance and there being no law regulating the same an imperative public necessity and emergency exists for its immediate passage, therefore it is enacted that the constitutional rule be suspended and that this act take effect from and after its passage.

Approved April 14, 1883.

Takes effect after passage.

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GENERAL LAWS, 36TH LEGISLATURE, PAGE 188. VALIDATING SALES OF SCHOOL LAND, UNIVERSITY, ASYLUM AND PUBLIC LANDS MADE BY AUTHORITY OF ACTS OF APRIL 12 AND 14, 1883, WHEREIN THE STATE DID NOT SPECIFICALLY RESERVE THE MINERALS.

H. B. No. 208.] CHAPTER 121.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. In all sales of public free school lands, University, Asylum and public lands made by the State of Texas, by authority of the Acts of the Legislature of date April 12th and 14th, 1883, wherein the mineral rights in said lands were not, by the State specially reserved, in its award of sale or classification of such lands, at the time of such sale, reserved to the State of Texas, the sales of such land by the State be, and the same are hereby validated, and the State of Texas hereby relinquishes unto the owners of said lands, when paid for, all of its rights and title to said minerals.

SECTION 2. The fact that the State of Texas, under the Acts of the Legislature of Date April 12th and 14th, 1883, sold various and sundry tracts of the public free school lands, University, asylum and public lands of the State of Texas without reserving any mineral rights unto itself, in its award of sale, or classification of such lands, which said lands in a great many instances have been transferred and passed into the hands of innocent purchasers in good faith, and if suits should now be brought by the State for such minerals would create a great confusion and financial loss to a great many citizens of Texas, who acted in good faith in the purchase of said lands and paid valuable considerations therefor, creates an emergency and an imperative public necessity that the constitutional rule requiring that bills be read on three several days be suspended, and the same is hereby suspended; that this Act take effect and be in force from and after its passage, and it is so enacted.

Approved March 24, 1919.

Becomes effective 90 days after adjournment.

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GENERAL LAWS, 21ST LEGISLATURE, PAGE 116.
MINES AND MINING.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That all the public school, university, asylum, and public lands containing valuable mineral deposits are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law by citizens of the United States and those who have declared their intention of becoming such: Provided, That all who have located and recorded claims under provious laws and have not abandoned same, but are engaged in developing same, shall have a prior preference right for thirty days after the passage of this act in which to relocate same under this act.

SECTION 2. It shall be the duty of the commissioner of the general land office immediately upon the passage of this act to have a map made showing the location of all public school, university, asylum, and public lands which are unsold at that date; and it shall be the duty of the geological and mineralogical survey to examine all such lands as soon as practicable thereafter, and to designate such tracts as are apparently mineral bearing as mineral lands for the purposes of this act. If mineral lands are afterwards claimed to exist at other locations than are so designated, they shall also be examined and classified accordingly.

SECTION 3. It shall be the duty of the commissioner of the general land office to unite a suitable number of these mineral locations into mining districts, in each of which shall be a surveyor who must either be the surveyor of the district or county or a regularly appointed deputy, and an officer qualified to administer oaths.

SECTION 4. A mining claim upon veins or lodes of quartz or other rocks in places bearing silver, cinnabar, lead, tin copper, or other valuable metals, (excluding deposits of iron, coal, kaolin, baryta, salt, marble, fire clays, valuable building stones, oil, or natural gas), may equal but shall not exceed one thousand five hundred feet along the vein or lode. No such claim shall exceed

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twenty-one acres in total area. The end line of each claim shall be parallel to each other, and all claims shall be in the form of a parallelogram or square unless such form is prevented by adjoining rights or boundaries of the section in which the claim lies. The locator under this act shall be entitled to the use of all the superficial area between the enclosing lines of the claim, and to all minerals thereon, and between the side and end lines extnding downwards vertically until the rights secured by posting are forfeited as provided, and in all conflicts priority of location shall decide.

Sections Five to Eight are omitted, as they are only applicable to metals.

SECTION 9. Whenever the owners of any mining claim shall desire a patent, they shall, within five years after the filing of the application for survey, file their application for a patent upon their claim with the commissioner of the general land office, accompanied with the receipt of the state treasurer, showing that twenty-five dollars per acre has been paid by the applicant for patent to the state treasurer. No patent shall be issued in any case until the expiration of sixty days from the filing of the application. Upon filing said application, the applicant shall cause to be published for four successive weeks, one insertion each week, in some newspaper published in the county in which the mine is situated, if there be any; if not, then in some newspaper published in the nearest county to the mine in which a newspaper is published, a notice stating the fact that application has been filed for patent on the claim (or claims), describing them clearly. A copy of the printed notice with affidavit that it has been published as required by this section, and that all the requirements of this act have been complied with, shall be filed with the commissioner of the general land office before patent shall issue. After the expiration of thirty days after the last insertion of said notice, patent shall issue unless protest has been filed.

SECTION 10. Any person or association of persons qualified as required by section 1 of this act, shall have the right to loacte and obtain a patent on any quanity of these lands, containing deposits of coal, iron ore, kaolin, baryta,

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salt, marble, fire clay, oil, natural gas, or valuable building stones, in legal subdivisions of the section, not exceeding one hundred and sixty acres to an individual person or three hundred and twenty acres to an association or corporation, upon compliance with the general land law in regard to obtaining titles and with regulations of section 9 in regard to publication, etc., and the payment to the state treasurer of not less than ten dollars per acre for such lands where the same shall be situated more than ten miles from any completed railroad, and not less than twenty dollars for such lands as shall be within ten miles of such road: Provided, That when any association of not less than four persons shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements: And provided further, That this act shall be held to authorize only one entry by the same person or association of presons under its provisions; and no association of persons, any member of which shall have taken the benefit of this act, either as an individual or as a member of any other association, shall enter or hold any other land under the provisions of this act; and no member of any association which shall have taken the benefit of this act shall enter or hold any other lands under its provisions: And provided further, That nothing in this section shall be construed to authorize the sale of lands valuable for mines of gold, silver, and copper, or other minerals enumerated in section 4.

SECTION 11. Any person desiring to contest the issuance of patent may do so by filing with the commissioner of the general land office a protest, setting forth the grounds of objection generally, and that protestant has an interest in the subject matter, which protest shall also state that the same is presented in good faith and not to injure or delay the applicants, or any of them, and the same shall be verified by affidavit; whereupon it shall be the duty of the commissioner to withhold patent until the controversy is ended: Provided, That if the protestant shall not, within thirty days after filing his protest, institute suit in the court having jurisdiction thereof in the county where the

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claims are located, his protest shall constitute no further barrier to the issuance of patent. A certified copy of the petition or a certificate of the clerk of the court where suit is pending shall be sufficient evidence to the commissioner of the pendency of the suit and of the date of filing said suit. When the land in controversy lies partly in two counties, suit may be brought in either. More than one claim shall not be embraced in the same patent or application. The suits here provided for shall be entitled to precedence of trial on the docket.

SECTION 12. When a location has been made in land disposed of by the State since the passage of an act for disposition of minerals on the land embraced in the first section of this act, approved April 14, 1883, if such location was made subsequent to the disposition by the State of such lands, and the locator or his assignees have not abandoned said claim, but is working it in good faith, locator and his assignees shall nevertheless be entitled to the mineral and to the use of the superficial area as in other cases; and if the case is such that the fee in the land cannot pass by patent, a patent may issue to all the minerals in the claims, and shall be a license from the State to enter upon and work said claim and extract the mineral therefrom. In case provided for in this section when the fee does not pass, the price shall be twenty dollars per acre, and the locator or his assignee shall in addition pay to the owner of the land in fee the fair value of the land so taken up by his claim, and roads and fences necessary to give him ingress and egress thereto, and be liable for any damages which may result to owner of the land in fee. All other provisions of this act shall apply to said location.

SECTION 13. All claims upon which patent has not been applied for within five years next after the application for survey, or which have not been surveyed and the field notes returned to the general land office within the time prescribed therefor as hereinbefore provided, or upon which the assessment work has not been done, an affidavit therefor, filed as provided by this act, shall be and are declared forfeited without judicial action of any kind and subject to location as originally, but not by any one inter-

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ested in the claim at the time of forfeiture; and any location for or on behalf of any such party shall be wholly void. Whenever any such claim shall be relocated, the locators and each of them shall make affidavit that the location is made without any contract or agreement of any kind that any of the parties owning an interest in the location before relocation has or is to have any interest in the same. In all other cases where affidavit is required by this act it may be made by one or more of the parties cognizant of the facts.

SECTION 14. No claim which has been forfeited for any cause shall be subject to relocation for a period of thirty days next thereafter; and the party owning the same may apply to the land commissioner within that time for relief, and if it appears to him from the proof submitted that the forfeiture was not occasioned by the negligence of the owner, but by circumstances which he could not reasonably control, the commissioner may, within that time, in his discretion, grant relief against the forfeiture, and if he grants such relief he shall at once forward his order to that effect to the surveyor, who shall file the same for record in his office.

SECTION 15. Whenever any application shall be made to buy or obtain title to any of the lands embraced in section one of this act, except where the application is made under this act, the applicant shall make oath that there is not, to the best of his knowledge and belief, any of the mineral embraced in this act thereon, and when the commissioner has any doubt in relation to the matter he shall forbear action until he is satisfied. And any sale or disposition of said lands shall be understood to be with a reservation of the mineral thereon to be subject to location as herein provided.

SECTION 16. That claims usually called placers, including all forms of metallic deposits, excepting veins of quartz or rock in place, shall be subject to entry and patent under like circumstances and conditions, and upon similar proceedings as are provided for vein or lode claims. All placer claims located shall conform as near as practicable with existing surveys and their subdivisions, and no such location shall include more than forty acres for each

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individual claimant, and shall not exceed three hundred and twenty acres for any association of persons. The price which shall be paid for such placer shall not be less than ten dollars per acre, together with all costs of proceedings as before provided.

SECTION 17. When non-mineral land, not contiguous to the vein or lode, is used by the prospector of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and includes in an application for a patent for such vein or lode, and the same may be patented therewith subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such non adjacent lands shall exceed ten acres, and payment for the same must be made at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for a mill site as provided in this section.

SECTION 18. Any owner or worker of mining claim under this act is authorized to fell and remove for building and mining purposes any timber or any trees growing or being upon unoccupied lands as described in section one, said lands being mineral and subject to entry only as mineral lands, under such rules and regulations as may be prescribed for the protection of timber and undergrowth upon such lands and for other purposes.

SECTION 19. The great importance of the mining interest of the state, and the uncertainty existing by reason of the abolishment of the land board, causes confusion in our mining laws, and creates an emergency, and an imperative necessity exists requiring the suspension of the constitutional rule requiring bills to be read on three several days be suspended, and said rule is so suspended, and this act shall take effect and be in force from and after its passage, and it is so enacted. All laws in conflict with this act are hereby repealed.

Approved, March 29, 1889.

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GENERAL LAWS OF TEXAS
24th Leg. 1895, Page 197

CHAP. 127.—[S. B. No. 175.] An Act to better and more fully promote the development of the mining resources of Texas, and to repeal all laws in conflict with the provisions of this Act.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That all public school, university, asylum and public lands specially included under the operation of this Act, all the lands now owned by the State situated within the reservation known as the "Pacific Reservation," which were taken off the market and reserved from sale by an Act approved January 22, 1883, containing valuable mineral deposits, are hereby reserved from sale or other disposition, except as herein provided, and are declared free and open to exploration and purchase under regulations prescribed by law, by citizens of the United States and those who have declared their intention of becoming such: *Provided,* that all who have located and recorded valid claims under previous valid laws and have not abandoned same, but are engaged in developing same, shall have a prior preference right for ninety days after the passage of this Act in which to relocate same under this Act.

SECTION 2. It shall be the duty of the Commissioner of the General Land Office immediately upon the passage of this Act to have a map made showing the location of all public school, university, asylum and public lands which are unsold at that date, and it shall be the duty of the Geological and Mineralogical Survey to examine all such lands as soon as practicable thereafter, and to designate such tracts as are apparently mineral bearing as mineral lands for the purposes of this Act. If mineral lands are afterwards claimed to exist at other locations than are so designated they shall also be examined and classified accordingly.

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SECTION 3. It shall be the duty of the Commissioner of the General Land Office to unite a suitable number of these mineral locations into mining districts, in each of which shall be a surveyor, who must either be the surveyor of the district or county or a regular appointed deputy and an officer qualified to administer oaths.

SECTION 4. A mining claim upon veins or lodes of quartz or other rocks in place bearing silver, gold, cinnabar, lead, tin, copper and other valuable metals, excluding deposits of kaolin, baryta, salt, marble, fire clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marls, natural cement, clay, onyx, mica, precious stones or any other non-metallic mineral, and stone valuable for ornamental or building purposes or other valuable building material, may equal but shall not exceed one thousand five hundred feet along the mine or vein or lode. No such claim shall exceed twenty-one acres in total area. The end lines of each claim shall be parallel to each other, and all claims shall be in the form of a parallelogram or square, unless such form is prevented by adjoining rights or boundaries of the section in which the claim lies. The locator under this Act shall be entitled to the use of all the superficial area between the enclosing lines of the claim, and to all minerals thereon between the side and end lines, extending downwards vertically, until the rights secured by posting are forfeited as provided; and in all conflicts priority of location shall decide.

SECTION 5. The locators of any mining claim shall post up at the center of one of the end lines of the same a written notice, stating the name of the location and of the claim and date of posting, and describe the claim by giving the number of feet in length and width and the direction the claim lies in length from the notice, together with the section, if known, and the county, and shall place stone monuments at the four corners and otherwise describe the corners so that they can be readily found. The notice shall be placed in a conspicuous place so it can be readily seen.

SECTION 6. The locator shall, within three months after the date of posting the required notice, sink a shaft

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at least ten feet in depth by four feet square, or a tunnel of the same dimensions ten feet in length, or an open cross cut twenty feet in length, four feet or more wide and ten feet in depth at its shallowest part, and shall within said time file with the county surveyor or the district surveyor of the county, as the case may be, an application in writing for the survey of the claim, which application shall be accompanied by a fee of twenty dollars, unless its tender is waived, and also with an affidavit attached thereto that the required work, signifying that it has been done, and that the locators have found valuable minerals on the claim; and the affidavit shall state the date of the first posting of the notice on the claim by the applicants, and further, that the notice has not been post dated or changed in its date. Upon receiving said application and fee the surveyor shall record the application, together with the affidavit, and he shall thereupon forthwith proceed to survey said claim, and forward the field notes to the Commissioner of the General Land Office within thirty days after filing the application, in default of which he shall pay the aggrieved party such damages as he may sustain, and in addition thereto shall be deemed guilty of a misdemeanor, and on conviction fined not less than twenty dollars nor more than one hundred dollars, and it shall be the duty of the applicants to see that the field notes are so returned. The fee of twenty dollars shall cover all the services provided for in this section. In all other cases enumerated in this Act the fee shall be the same allowed county clerks for similar services.

SECTION 7. Annually after the filing of the application for a survey as hereinbefore provided, the claimant shall, until after the application is made for a patent, as hereinafter provided, do one hundred dollars' worth of work in developing each claim; but where claims adjoin, the amount of work may be done on one for all belonging to the same party. The value of such shall be estimated at what it could be contracted for at a fair cash price, but the cost of tools and implements and the expense of going to and returning from the mine shall not be included in said estimate. Within one month after the expiration of each

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year the owner shall make and file with the surveyor his affidavit setting forth specifically what the work consists of in detail, and the value thereof. Upon the failure of any one of several owners to contribute his proportion of the expenditures required in this Act within the necessary time, the co-owners who have performed the labor or made the improvements or paid the fees or other expenditures required in this Act, may at the expiration of the year in which the same is to be done, give notice in writing or notice by publication in a newspaper published in the county where the claim is, if any; if none in such county, then in the newspaper published nearest the mine, for at least once a week for ninety days. If after such personal notice in writing or by publication such delinquent shall fail or refuse to contribute his proportion of the expenditure required by this Act, his interest in the claims shall become the property of his co-workers who have made the required expenditures. An affidavit by the co-owners forfeiting the interest of such delinquent shall, when recorded in the office of the proper surveyor, be sufficient evidence of such delinquency.

SECTION 8. That when a tunnel is run for the development of a vein or lode or for the discovery of mines, the owner of such tunnel shall have the right of possession of all veins or lodes within two thousand feet of the face of such claim on the line thereof, not previously known to exist, discovered in such tunnel to the same extent as if discovered from the surface; and locations on the line of such tunnel or veins or lodes not appearing on the surface made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence shall be invalid; but failure to prosecute the work in the tunnel for six months shall be considered as an abandonment of the right of all undiscovered veins on the line of said tunnel.

SECTION 9. Whenever the owners of any mining claim shall desire a patent, they shall, within five years after the filing of the application for survey, file their application for a patent upon their claim with the Commissioner of the General Land Office, accompanied by the receipt of the

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State Treasurer showing that twenty-five dollars per acre has been paid by the applicant for patent to the State Treasurer. Whereupon such patent shall issue unless protest is filed as hereinafter provided for in section 11.

SECTION 10. Within twelve months after the filing of the affidavit hereinafter provided for, any person or association of persons qualified as required by section 1 of this Act, shall have the right to purchase and obtain patent by compliance with this Act, or any of the lands of the State which are specified or included in section 1 of this Act, containing valuable deposits of kaolin, baryta, salt, marble, fire clay, iron ore, coal, oil, natural gas, gypsum, nitrates, mineral paints, asbestos, marl, natural cement, clay, onyx, mica, precious stones or any other non-metallic mineral and stones valuable for ornamental or building purposes or other valuable building material, in legal subdivisions, in quantity not exceeding one section: *Provided*, that where any such parties shall have heretofore expended, or shall hereafter expend, five thousand dollars in developing the aforesaid mineral resources of any of said lands, such party shall have the right to buy one additional section and no more, and to include in the purchase any section or part thereof on which the work may have been done. The land so purchased may be in different sections, and all embraced in one or more obligations, not to exceed the quantity stated. The purchaser shall pay not less than fifteen dollars per acre where the land shall be situated ten miles or less of any railroad in operation, and not less than ten dollars per acre where the land is over ten miles from such railroad, one-tenth of the purchase money to be paid in cash to the State Treasurer on or before the expiration of the twelve months aforesaid; and the purchasers shall file the Treasurer's receipt with the Commissioner of the General Land Office, together with an obligation to pay the State of Texas the remainder in nine equal annual installments, with interest at four per cent per annum from date, subject to forfeiture as in other cases; and all said lands are reserved from sale or other disposition than under this Act; and where application is made to buy any of the lands herein named except under this Act, the purchaser

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shall swear that there are none of the minerals named in this Act on said lands, so far as he knows or has reason to believe or does believe: *Provided, further,* that any party hereinbefore named, who shall prior to the passage of this Act have been the first to work on said lands for the development of said mineral resources, and who has not abandoned said work, and is qualified at passage of this Act to buy, shall have a prior preference right of doing so for thirty days after this Act goes into effect: *Provided, further,* this section of this Act shall not authorize the sale of lands containing valuable deposits of gold, silver, lead, cinnabar, copper or other valuable metal: *Provided, further,* that any person desiring to acquire any lands under the provisions of this section shall have the right to prospect said land for a period of twelve months before making any payment thereon, upon condition that said prospector shall file with the proper surveyor his affidavit in writing, setting forth that he has gone upon the land in good faith with the intention of purchasing the same under the provisions of this section, and in said affidavit give a reasonable description of said land. After the filing of said affidavit the said surveyor shall immediately forward same to the Commissioner of the General Land Office, who shall take said section off the market until the expiration of said twelve months after the filing of said affidavit with the surveyor.

SECTION 11. Any person desiring to contest the issuance of patent may do so by filing with the Commissioner of the General Land Office a protest setting forth the grounds of objection generally, and that protestant has an interest in the subject matter, which protest shall also state that the same is presented in good faith and not to injure or delay the applicants or any of them, and the same shall be verified by affidavit. Whereupon it shall be the duty of the Commissioner to withhold patent until the controversy is ended: *Provided,* that if the protestant shall not within thirty days after filing his protest institute suit in the court having jurisdiction thereof in the county where the claims are located, his protest shall constitute no further barrier to the issuance of patent. A certified copy of the petition

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or a certificate of the clerk of the court where suit is pending shall be sufficient evidence to the Commissioner of the pendency of the suit, and of the date of filing said suit. When the land in controversy lies partly in two counties suit may be brought in either. More than one claim shall not be embraced in the same patent or application. The suits here provided for shall be entitled to precedence of trial on the docket.

SECTION 12. All claims upon which patent has not been applied for within five years next after the application for survey, or which have not been surveyed and the field notes returned to the General Land Office within the time prescribed therefor as hereinbefore provided, or upon which the assessment work has not been done, an affidavit therefor filed as provided by this Act, shall be and are declared forfeited without judicial action of any kind, and subject to location as originally, but not by any one interested in the claim at time of forfeiture, and any location for or on behalf of any such party shall be wholly void. Whenever any such claim shall be relocated, the locators and each of them shall make affidavit that the location is made without any contract or agreement of any kind that any of the parties owning an interest in the location before the relocation has or is to have any interest in the same. In all other cases where affidavit is required by this Act it may be made by one or more of the parties cognizant of the facts.

SECTION 13. No claim which has been forfeited for any cause shall be subject to relocation for a period of thirty days next thereafter, and the party owning the same may apply to the Land Commissioner within that time for relief, and if it appear to him from the proof submitted that the forfeiture was not occasioned by the negligence of the owner, but by circumstances which he could not reasonably control, the Commissioner may within that time, in his discretion, grant relief against the forfeiture, and if he be granted such relief he shall at once forward his order to that effect to the surveyor, who shall file the same for record in his office.

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SECTION 14. Whenever any application shall be made to buy or obtain title to any of the lands embraced in section 1 of this act, except where the application is made under this act, the applicant shall make oath that there is not, to the best of his knowledge and belief, any of the minerals embraced in this act thereon, and when the Commissioner has any doubt in relation to the matter he shall forbear action until he is satisfied. Any such sale or disposition of said lands shall be understood to be, with the reservation of the minerals thereon, to be subject to location as herein provided.

SECTION 15. That claims usually called placers, including all forms of metallic deposits, excepting veins of quartz or rock in place, shall be subject to entry and patent under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims. All placer claims located shall conform as near as practicable with existing surveys and their subdivisions, and no such location shall include more than forty acres for each individual claimant, and shall not exceed three hundred and twenty acres for any association of persons. The price which shall be paid for such placer shall not be less than ten dollars per acre, together with all costs of proceedings as before provided.

SECTION 16. Where non-mineral land not contiguous to the vein or lode is issued by the prospector of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location of such non-adjacent lands shall exceed ten acres, and payment for the same must be made at the same rate as fixed by this Act for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for a mill site, as provided in this section.

SECTION 17. Any owner or worker of mining claim under this Act is authorized to fell and remove for building

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and mining purposes any timber or any tree growing or being upon unoccupied lands as described in section 1, said lands being mineral and subject to entry only as mineral lands, under such rules and regulations as may be prescribed for the protection of timber and undergrowth upon such lands and for other purposes.

SECTION 18. Nothing in this Act shall ever be so construed as to either destroy, invalidate or impair any valid claim, right or interest existing in, to or concerning any lands whatever at the passage of this Act, of any preemptor, purchaser, claimant, actual settler, locator or other person whatsoever.

SECTION 19. The net proceeds of all sales of mining lands under the provisions of this Act shall inure to the benefit of the State and the respective funds for which the lands mentioned in section 1 of this Act are now set apart under the Constitution and the laws of the State, and it shall be the duty of the Comptroller, State Treasurer and Commissioner of the General Land Office to see to it and have said proceeds so paid rightly placed to the credit of the particular and proper fund.

SECTION 20. For the purpose of effectually carrying out the provisions of this Act all county or district surveyors are hereby especially authorized and empowered to administer oaths, take affidavits and make certificates thereof: *Provided, further,* that all laws and parts of laws in conflict with this Act, or any part thereof, are hereby especially repealed.

SECTION 21. The mining interests of the State are great and important, and there are no general laws free from doubt and uncertainty regulating in an adequate, general and just manner the mining interest of the whole State; therefore, an imperative public necessity and emergency exists for the passage of this Act; therefore it is enacted that the constitutional rule requiring bills to be read on three several days be suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

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GENERAL LAWS OF TEXAS, 32ND LEGISLATURE, PAGE 409, 1913.

SCHOOL LANDS—RELATING TO PROSPECTING AND DEVELOPING MINERALS THEREON.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. All public school, University, Asylum and the other public lands, fresh water lakes, islands, bays, marshes, reefs, and salt water lakes, belonging to the State of Texas, and all lands which may hereafter be so owned and all lands which have been heretofore sold or disposed of by the State of Texas, with a reservation of minerals or mineral rights therein, as well as all lands which may hereafter be sold with reservation of minerals or mineral rights therein, and lands purchased with relinquishment of the minerals therein, shall be included within the provisions of this Act and shall be open to mineral prospecting, mineral development and the lease of mineral rights therein in the manner herein provided. Only citizens of the United States and such other persons as have heretofore declared or shall hereafter declare their intention of becoming such shall be entitled to acquire any rights under this Act. It is declared to be the policy of the State to open all such lands to mineral prospecting and development on a system providing for the payment into the State Treasury to the credit of the permanent free school, University, Asylum or other funds, of certain rents and royalties upon the gross output of any minerals or mineral product thereon.

SECTION 2. Any person or association of persons, corporate or otherwise, desiring to obtain the right to prospect for and develop petroleum oil or natural gas that may be in any of the surveyed public free school land, University or Asylum or other public lands of the State, which may be unsold at the time such desire is made known as herein provided, or in any of said land which has heretofore been sold with the reservation of minerals therein to the public free school fund or other fund and such of said land as has heretofore been purchased with the relinquishment of the minerals therein by the purchaser, or in any of said land that may hereafter be sold with the reservation of minerals herein, also in any of the fresh water lakes owned by the

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State or public free school fund or other fund, and also in any of the islands, bays, marshes, reefs and salt water lakes, may do so under the regulations, terms and conditions of this Act, together with such rules and regulations as may be adopted relative thereto and necessary for the execution of the purpose of this Act by the Commissioner of the General Land Office.

SECTION 3. One desiring to obtain the right to prospect for and develop petroleum oil or natural gas that may be in any of the surveyed lands mentioned herein shall first file with the clerk of the court of the county in which the area desired, or a portion thereof, is situated, or with the clerk of the county to which said county may be attached for judicial purposes, a separate application in writing for each tract applied for, designating the land in which he desires to acquire the aforesaid rights. No individual or corporation shall be awarded exceeding 1280 acres of the public lands the State for oil or gas development purposes, and no individual or corporation shall be awarded exceeding 200 acres for oil and gas development purposes within ten miles of any producing oil or gas well. The said 1280 acres in undeveloped territory, or the 200 acres within ten miles of any producing oil or gas well, may be in as many different tracts of land of fresh water lakes as the applicant may desire, provided the applicant correctly describes the land or fresh water lakes desired for development purposes. The lines of all tracts less than a whole survey shall conform to the exterior of the lines of the survey of which it may be a part, as nearly as practicable. The said clerk shall file and record the application or applications aforesaid and note the same on his register opposite the entry of the proper survey if surveyed or in his record book if unsurveyed, giving the time of filing, and the applicant shall file such application in the General Land Office together with one dollar as filing fees within thirty days after the date it was filed by the county clerk.

SECTION 4. One desiring to obtain the right to prospect for and develop petroleum oil or natural gas in any of the States' islands, salt water lakes, bays, marshes, reefs and fresh water lakes owned by the State, or in any of the unsurveyed public land, shall first file a separate written

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application for each tract applied for with the county surveyor of the county in which the area or a part of same may be situated or the county to which said county may be attached for surveying purposes giving a designation of the same sufficient to identify it. The surveyor shall immediately file and record same, giving time of such filing, and within ninety days thereafter he shall survey and deliver to the applicant the field notes and original application. Said papers, together with one dollar as filing fee, shall be filed in the General Land Office, within one hundred days after the application was filed with the county surveyor, and not thereafter. Locations and surveys under this Section shall not exceed 1280 acres in undeveloped territory and not exceeding 200 acres within ten miles of a producing gas or oil well. All locations and surveys under this Section shall, if practicable, be of regular form, but in every case the line or lines adjacent to other surveys shall conform to the lines of such adjacent surveys. If there are no adjacent surveys the surveyor shall connect such survey with some established survey on the main land.

SECTION 5. When the Commissioner receives an application, or application and field notes, as provided for in the two preceding sections, within the time required, together with the filing fee of one dollar, he shall file same, and if, upon examination, said papers are found to be correct, and in compliance with this Act, and if the status of the area applied for is within the provisions herein, the applicant shall be entitled to the right to prospect for and develop the petroleum oil or natural gas that may be under the surface embraced in the application and field notes, and as evidence of such right the Commissioner shall issue to each applicant a permit after the applicant shall have compiled with the conditions hereinafter imposed.

SECTION 6. Before the issuance of the permit provided for in the preceding section the applicant shall pay to the Commissioner of the General Land Office ten cents per acre for each acre embraced in the application and field notes. Thereupon a permit shall be issued to the applicant conferring upon him an exclusive right to prospect for and develop petroleum oil or natural gas within the designated area for

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a term not to exceed two years. Within thirty days after the expiration of the first year the owner of the permit shall pay another ten cents per acre as in the first instance. Upon the termination of the period for which the original permit was granted and the receipt of satisfactory evidence of the compliance with the conditions prescribed in Section 7 of this Act, and such compliance shall not have led to the discovery of petroleum oil or natural gas in commercial quantitles, then the Commissioner may grant an extension of the permit for a term not to exceed one year upon the payment by the applicant or his successors in interest of an additional fee of twenty-five cents per acre. No extension, however, shall be granted unless satisfactory proof of an effort towards the development of the area included in the permit has been made in good faith and the expenditure of the sum required and duly submitted as set forth in Section 7 of this Act.

SECTION 7. Before the expiration of six months after the date of the permit the owner of said permit shall in good faith commence actual work necessary to the physical development of said area, and if petroleum oil or natural gas is not developed the owner or manager shall, on or before the thirty days after the expiration of twelve months from the date of the permit, file in the General Land Office a sworn statement supported by two disinterested, credible witnesses that such actual work was begun within the six months aforesaid, and that petroleum oil or natural gas has not been discovered in commercial quantities and that a bona fide effort to develop said was made during the six months preceding the filing of said statement during the two years covered by said permit the owner thereof shall expend not less than four thousand dollars in a bona fide effort for the development of such area, unless such area has sooner been developed or abandoned. The owner or manager shall, within thirty days after the expiration of the two years from the date of the permit, filed with the Commissioner of the General Land Office a sworn statement supported by two disinterested, credible witnesses that such bona fide effort for the development of the area has been made, stating in what condition, and showing the expenditure thereof. A failure to file either of the sworn statements herein pro-

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vided for within the time specified, or the filing of a statement untrue or false in material matters, or the failure to expend the sum named in a bona fide effort toward the development of the area or areas, shall work a revocation of said permit and the termination of the rights of the owner. Such termination shall be endorsed by the Commissioner of the General Land Office, upon a duplicate copy of the permit retained in the General Land Office. Upon the termination of such permit the area shall again be subject to location by another than the forfeiting owner. The expenditure herein required for development purposes may be made upon one or more contiguous tracts embraced in a permit and shall be sufficient for the entire area embraced in one such permit. The amount herein required to be expended in development purposes shall be required on each and every non-contiguous area. A separate permit shall be issued for each non-contiguous area, but may contain an entire contiguous area of two or more adjacent tracts of land. An application may embrace contiguous portions of different tracts or surveys. An assignment by deed or other form of transfer and also a lien of any form may be executed upon any claim to any person, association of persons, corporate or otherwise, that may be qualified to obtain a permit or lease in the first instance; provided, that deed or other evidence of sale, assignment or lien shall be recorded in the county where the property or a part thereof is situated and shall be filed in the Land Office within sixty days after the date thereof, accompanied by a filing fee of one dollar. If such instrument shall not be filed in the Land Office within the time required such deed or evidence of transfer or evidence of lien shall not have the effect to convey the property nor shall the obligations incurred therein be enforceable.

SECTION 8. If at any time within the life of the permit one should develop petroleum oil or natural gas in commercial quantities the owner or manager shall file in the Land Office a statement of such development within thirty days thereafter, and thereupon the owner of the permit shall have the right to lease all or part of the area included in the permit upon the following conditions:

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(1) An application and a first payment of $2.00 per acre for a lease of the area included in a permit shall be made to the Commissioner of the General Land Office within thirty days after the discovery of petroleum oil or natural gas in commercial quantities.

(2) A lease may be granted for a period of ten years or such portion thereof as the applicant may desire and with the option of renewal or renewals for an equal or a shorter period upon the payment of a cash sum of $2.00 per acre in advance on the entire area included in any lease and an equal sum annually in advance thereafter during the life of such lease, and in addition thereto the owner of such lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum oil.

(3) The owner of a permit shall not take, carry away or sell any petroleum oil or natural gas found in any area before such owner shall have obtained a lease therefor; provided, such owner may use for fuel such portion of said substances as may be necessary for the continued development of the area without accounting therefor. In addition to the $2.00 per acre annually in advance, the owner of a gas well shall pay a sum of money equal to 10 per cent. of the meter output of all gas sold. The said royalty on petroleum oil, or natural gas, shall be paid to the Commissioner of the General Land Office monthly during the life of the lease. In all such payments the owner or manager shall accompany the remittance with a sworn staatement of the amount produced, and the market price of the output, and a copy of any pipe or pipe lines or tank receipt, check or memoranda of amount put out or into such lines or tanks. The books and accounts and the receipts and discharges of all lines, pipe lines or tanks and gas lines and gas pipes, and all other matters pertaining to the production, transportation and marketing of the output shall be open to the examination and inspection at all times by the Commissioner of the General Land Office or his representative or any other representative of the State. The value of any unpaid royalty or royalties and any sum or sums due to the State upon any lease contract shall become a prior lien upon all production of

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petroleum oil or natural gas produced upon the leased areas to secure the payment of any royalties and sums due the State.

SECTION 9. In the event any land or water included within the operation of this Act has heretofore been or may hereafter be sold by the State with the reservation of minerals therein, or has been purchased by one with the waiver of mineral rights, such land shall be subject to prospect and lease as set forth in this Act, but the owner of the permit or lease shall pay to the owner of the surface of the land twenty-cents per acre per annum in advance during the life of the permit or lease and the first payment shall be paid to the Commissioner of the General Land Office, for the use of the owner of the surface, prior to the issuance of such permit, and said sum so paid to the owner of the surface rights shall be in full compensation for all damages to such surface by reason of the ingress and egress and operation necessary to development and the operation under the permit or lease; provided, that if the owner or lessee of the surface will not accept the payment of twenty cents per acre per annum as above provided, and the lessee of the mineral rights cannot agree with such owner or lessee of the surface rights on the compensation to be paid for the use of the damages to such surface rights, then the right thereto and the ingress and egress from such mine or mining claim may be acquired by condemnation as hereinafter provided.

SECTION 10. No person, association of persons, corporate or otherwise, shall hold or own at one time by permit or lease, direct or through assignment, nor hold or own a controlling interest in more than two sections of 640 acres each, more or less, of surveyed school land, University, Asylum or other public land, nor more than 1280 acres of islands, lakes, bays, marshes, reefs, or unsurveyed school, University or Asylum or other public land in any undeveloped field nor more than two hundred acres within ten miles of any producing oil or gas well.

SECTION 11. A person or association of persons, corporate or otherwise, applying for a permit or lease shall file with the application a sworn statement showing what inter-

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est, if any, the applicant or each of the members of the association or each stockholder in the corporation may hold in any other permit or lease issued by the State. When the Commissioner is satisfied that the applicant is entitled to such permit or lease he shall issue the permit for a term not to exceed two years, and the lease may be issued for such time as the applicant may elect, not to exceed ten years, with the right of a renewal or renewals upon such terms and conditions as hereinbefore provided. The permit or lease shall contain the terms upon which it is issued and such other matters as the Commissioner may deem important to the rights of the State or applicant. Should a permit or lease be issued upon a statement by the applicant or applicants, or either of them, which is false or untrue in any material fact, the Commissioner may cancel such permit or lease when sufficiently informed as to such false or untrue statements.

SECTION 12. Should the owner of a permit fail or refuse to proceed with reasonable diligence in a bona fide effort to develop an area included in such permit, the Commissioner of the General Land Office may cancel the same Should the holder of a lease fail or refuse to proceed with reasonable diligence and in a bona fide effort to develop, operate and put out the product of a producing well of petroleum oil or natural gas at any time during the life of a lease, the Commissioner of the General Land Office may cancel such lease contract. In the event of a cancellation of a permit or lease contract for the causes mentioned in this Section the area included therein shall be subject to the application of another than the forfeiting owner, in the same manner as in the first instance; provided, should a lease covering a producing well be cancelled an application for a lease of such area, or part thereof, may be made direct to said Commissioner, and a copy of such lease shall be filed in the office of the county clerk.

SECTION 18. If any mining claim of any character shall be filed upon jointly by two or more claimants and any one or more of them shall fail to contribute his proportion of any expenses required in this Act within the necessary time the co-owner or co-owners who have paid the fees or other

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expenditures required by this Act may, at the expiration of the time in which the payment is required to be made and after the same has been made, give notice in writing to such defaulting co-owner, or if such defaulting co-owner cannot be found, then by publication in a newspaper published in the county where the claim is situated, or if no such newspaper be published in such county, then in the newspaper published nearest thereto at least once a week for four successive weeks. If, after such publication notice, such delinquent shall fail or refuse to contribute his proportion of the expenditures required, his interests in the claim shall cease and shall be forfeited to the co-owner or co-owners who have made the required expenditures. An affidavit of such co-owner or co-owners of the claim, accompanied with notices given, shall, when recorded in the office of the county clerk, be sufficient evidence of such delinquency and forfeiture.

SECTION 21. Any locator, claimant, or owner of any mining claim under this Act is authorized to fell and remove for building and mining purposes any timber or any trees growing or being upon any unoccupied public lands under such rules and regulations as the Commissioner of the General Land Office may, from time to time, provide for the protection of timber and other growth upon such lands and such other purposes.

SECTION 22. Nothing in this Act contained shall ever be construed to destroy, invalidate or impair any valid claim, right or interest existing in, to or concerning any lands whatsoever at the date of the passage of this Act, or of any preemptor, purchaser, claimant, settler, locator or any other person whatsoever.

SECTION 23. The locator or owner of a mining claim shall have the right to occupy within the limits of his claim so much of the surface ground as is strictly necessary for the use and exploitation of the mineral deposits and for the buildings and works necessary for mining operations and for the treating and smelting of the ore produced on such claims and to occupy within and without the limits of his claim the necessary land for right of way, for ingress and egress to and from his claim, for roadways, or railways;

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provided, that if the locator or owner of the mineral right cannot agree with the owner or lessee of the surface right in regard to the acquiring of same and in regard to the compensation for the injury incident to the opening and the working of such mine and the access thereto, he may apply to the judge of the county court of the county in which such mining claim is located by filing a written petition setting forth with a sufficient description the property and surface right sought to be taken and the purpose for which the same is to be taken, and it shall be the duty of such county judge of such county to appoint three disinterested freeholders to examine, pass upon and determine the damages and compensation to be paid to the owner of such surface right or other property necessary to be taken, and the proceedings for acquiring or condemning such surface right or other property shall, at all times, so far as possible, be covered by the laws relating to the condemnation of rights of way for railway companies, the locator or owner of such mining claim, occupying the position of the railway company, and an appeal may be taken from the decision of the commissioners upon the same terms and conditions and subject to the same regulations and qualifications prescribed by law for the condemnation of right of way for railways

SECTION 24. Upon all lands of any character heretofore sold or leased by the State in which the minerals or mineral right were reserved to the State, the public free school fund, University fund, Asylum or other fund, the grantee or lessee, as the case may be, shall have the prior right for six months after date upon which this Act shall take effect to prospect, locate and apply for mineral rights upon such land heretofore sold or leased to him, and after the expiration of such six months such preference or priority right shall cease and such grantee or lessee shall have no prior or preference rights over any other prospector or locator.

SECTION 25. The holder of a permit, a lease, a prospecting right, or any other right acquired under this Act, may relinquish one or more of such permits, leases, claims or prospector's claims at any time by filing a relinquishment

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in the General Land Office after it is duly recorded by the clerk of the proper county, but such holder shall not be entitled to a refund of any sum paid thereon.

SECTION 26. The Commissioner of the General Land Office shall collect and transmit to the State Treasurer all money derived from the development of any minerals or substance named herein and found on the public free school land or other public land, and it shall be credited to the permanent free school fund or other fund to which the land from which such money is derived is set apart. All money derived from the development of any mineral or substances named herein and found on other than public free school land, University or Asylum land, shall be credited to the game, fish and oyster fund for the use of that department. All fees shall be credited to the general revenue in the manner provided by law for other fees laid into the General Land Office.

SECTION 27. All development in water or on islands, marshes and reefs shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Game, Fish and Oyster Commissioner may be called upon for assistance in the adoption and enforcement of rules and regulations for the protection of said waters. For a violation of such rules and regulations the Commissioner of the General Land Office may revoke a permit or cancel a lease.

SECTION 28. The rights acquired under this Act shall be subject to taxation as is other property after the owner shall have paid to the State the sums necessary to perfect his rights.

SECTION 29. The issuance of a permit or lease or the filing of a prospector's affidavit on unsold land included within this Act shall not prevent the sale of the land without minerals on which such mineral or mining claim may be located under the laws applicable to such land, but in case of such sale after an application has been filed with the county clerk so herein provided the purchaser of such land shall not be entitled to any part of the proceeds of such minerals or mining location nor other compensation, nor shall such purchaser have any action for damages done to

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such land by or resulting from the proper working of or operation under such permit, lease or prospector's claim.

SECTION 30. The Commissioner of the General Land Office shall have general supervision of all matters necessary for the proper administration of the purpose of this Act, and he is authorized to adopt rules, regulations and to alter or amend them from time to time as may appear necessary for the protection of the interest involved and the execution of the purposes of this Act not inconsistent with its provisions and the Constitution of the State.

SECTION 31. No individual, firm association of persons or corporations shall be entitled to locate or lease more than five mining claims of any character defined in Section 15 and 19 and any location or lease made contrary to this Section shall be void; provided, however, that upon coal or lignite mines or deposits any one individual, firms, association of persons or corporations shall be entitled to locate or lease a total area not to exceed twenty-five hundred and sixty (2560) acres.

SECTION 32. If any provision of this bill shall be held to be unconstitutional either as applied to any character of land or water described in Section 1 or in any other respect, such decision shall not be construed to invalidate the provision of this Act with regard to any other character of land of [or] waters described in Section 1 or any other provision of this Act.

SECTION 33. Chapter 1, Title 93, of the Revised Civil Statutes of 1911, relating to mines and mining and all other laws and parts of laws relating to the sale of minerals land are hereby repealed.

SECTION 34. The fact that there is no adequate statute by which the mineral resources of this State can be properly developed on the public lands and the waters of the State creates an emergency and an imperative public necessity exists that the constitutional rule requiring bills to be read on three several days in each House should be suspended, and that this should be placed upon its third reading and final passage and take effect from and after its passage.

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PRESENT LAW OF MINES AND MINING

GENERAL LAWS OF THE 35TH LEGISLATURE, PAGE 158.

EXTENDING RIGHTS OF PROSPECTORS FOR MINERALS.

[S. B. No 357.] CHAPTER 83.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. All of Chapter 173 of the Regular Session of the Thirty-third Legislature approved April 9, 1913, shall be so amended as to hereafter read as follows:

Section 1. All public school, University and Asylum land and other public lands, fresh water lakes, river beds and channels, islands, bays, marshes, reefs and salt water lakes belonging to the State and all lands which may hereafter be so owned and all of said lands which have heretofore been sold or disposed of by the State or by its authority with a reservation of minerals or mineral rights therein as well as all lands which may hereafter be sold with the reservation of minerals or mineral rights therein, and lands purchased with a relinquishment of the minerals therein, shall be included within the provisions of this Act and shall be open to the prospecting for and the development of the minerals and substances known as gold, silver, cinnabar, lead, tin, copper, zinc, platinum, radio-active minerals, tungsten, ores of aluminum, coal, lignite, iron ore, kaolin, fire clays, barite, marble, petroleum, natural gas, gypsum, nitrates, asbestos, marls, salt, onyx, turquois, mica, guano, bismuth and bismuth bearing minerals, asphalt, potash compounds, sulphur, graphite, magnesia, fuller's earth and molybdenum and molybdenum bearing minerals upon the terms and conditions provided in this Act.

SECTION 2. Any person or association of persons, corporate or otherwise, being a citizen of the United States or having declared an intention of becoming such, desiring to obtain the right to prospect for and develop the minerals

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and substances named above that may be in any of the areas, included herein may do so under the provisions of this Act together with such rules and regulations as may be adopted by the Commissioner of the General Land Office relative thereto and necessary for the execution of the purposes of this Act.

SECTION 3. One desiring to obtain the right to prospect for and develop petroleum oil and natural gas that may be in any of the surveyed areas included herein shall file with the county clerk an application in writing giving a designation of same sufficient to identify it. The county clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections or that equivalent eligible to be embraced in one permit such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum.

SECTION 4. One desiring to obtain the right to prospect for and develop petroleum and natural gas in any of the State's unsurveyed areas named in this Act shall file with the county surveyor an application in writing for each area applied for, giving a designation of same sufficient to identify it, but such area shall not exceed 2560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application.

SECTION 5. When the Commissioner receives an application that was filed with the county clerk or an application that was filed with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for and a sworn statement by the applicant showing what interest he has in other permit, lease or patent issued under this Act and in good standing, he shall file same, and if upon examination the application or the application and field notes are found correct and the area

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applied for is within the provisions of this Act the Commission shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years.

SECTION 6. Before the expiration of twelve months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area and if petroleum or natural gas is not sooner developed in commercial quantities the owner or manager shall, within thirty days after the expiration of one year from the date of the permit file in the General Land Office a sworn statement supported by two disinterested credible persons that such actual work was begun within the first twelve months aforesaid and that a bonafide effort to develop the said area was made during the twelve months preceding the filing of the statement and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file the statement herein provided for within the time specified or the filing of a statement untrue or false in material matters shall subject the permit to forfeiture and the termination of the rights of the owner. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefore: provided, such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor. (Amendment of March 31st, 1917.)

SECTION 7. If at any time within the life of a permit one should develop petroleum or natural gas in commercial quantities the owner or manager shall be in the General Land Office a statement of such development within thirty days thereafter, and thereupon the owner of the permit shall have the right to lease the area included in the permit upon the following conditions:

1. An application and a first payment of two dollars per acre for a lease of the area included in the permit shall be made to the Commissioner of the General Land Office

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within thirty days after the discovery of petroleum or natural gas in commercial quantities.

2. Upon the payment of two dollars per acre for each acre in the permit a lease shall be issued for a term of ten years or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and annually after the expiration of the first year after the date of the lease the sum of two dollars per acre shall be paid during the life of the lease, and in addition thereto the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of ali gas disposed of off the premises.

3. The royalties shall be paid to the State through the Commissioner of the General Land Office at Austin, monthly during the life of the lease. All payments shall be accompanied by the sworn statement of the owner or manager or other authorized agent showing the amount produced since the last report and the market value of the output and a copy of all pipe line receipts, tank receipts, gauge of all tanks into which petroleum may have been run, or other checks and memoranda of amount put out or into pipe leins or tanks or pools. The books and accounts, the receipts and discharges of all pipe lines, tanks and pools and gas lines and gas pipes and all other matters pertaining to the production, transportation and marketing of the output shall be open to the examination and inspection at all times by the Commissioner of the General Land Office or his representative or any other person authorized by the Governor or Attorney General to represent the State. The value of any unpaid royalty and any sum due the State under this Act upon any lease shall become as prior lien upon all production produced upon the leased areas and the improvements situated thereon to secure the payment of any royalty and any sum due the State arising under the operation of any portion of this Act.

4. The permit or lease shall contain the terms upon which it is issued including the authority of the Commissioner to require the drilling of wells necessary to offset

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wells drilled upon adjacent private land, and such other matters as the commissioner may deem important to the rights of the applicant or the State.

SECTION 8. In the event the surface of an area included within the operations of this Act has heretofore been or may hereafter be acquired by one prior to the filing of an application under the provisions herein such area shall nevertheless be subject to prospect and lease as provided herein but the owner of the permit or lease shall pay to the owner of the surface annually in advance during the life of the permit or lease, ten cents per acre and the sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface.

SECTION 9. Every person or association of persons, corporate or otherwise, applying for a permit, lease or patent shall file with the application a sworn statement showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement.

General Provisions.

SECTION 16. The general provisions in this and the following section shall apply to all the foregoing provisions so far as applicable.

Surveyed land within the meaning of this Act shall include all tracts for which there are approved field notes on file in the General Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this Act include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated or with the clerk of the county to which such county may be attached for judicial purposes and accompanied by one dollar filing fee, and it shall be filed in the General Land Office within thirty days after it was filed with the county clerk and accompanied by one dollar filing fee.

All applications for unsurveyed areas shall be filed with the county surveyor, or his deputy, of the county in which

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the area or a part thereof is situated, accompanied by one dollar filing fee, but if such county has no surveyor then the application shall be filed with the clerk of the proper county and by him recorded in the surveyor's records, and in that event the area may be surveyed by the surveyor of the nearest county as now provided by law. The area shall be surveyed within ninety days and the application, field notes and plat shall be filed in the General Land Office, accompanied by a filing fee of one dollar, within one hundred days after the date of the filing of the application.

The payment per acre required to be made before the issuance of a permit shall be paid annually thereafter during the life of the permit or lease.

A separate written application shall be made for the area desired in a permit. No permit, lease or patent shall embrace the area in two or more applications.

No application, permit, lease or patent shall embrace a divided area.

Whole tracts of surveyed land may be applied for as a whole or in eighty acre tracts or multiples thereof without furnishing field notes therefor.

A duplicate of every permit and lease shall be kept in the General Land Office.

The area in each permit shall be developed independently of other areas.

When one desires, a lease or patent to any one or more whole tracts in the permit may be abandoned by relinquishment filed in the General Land Office as herein provided and thereupon obtain a lease or patent upon the remaining area; provided such remaining areas is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the General Land Office accompanied by one dollar filing fee. The Commissioner of the General Land Office shall mail notice to the proper county clerk of the filing of the relinquishment and when said notice has had time through due course of mail to reach said clerk the area shall be subject to applications as in the first instance.

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SECTION 17. The proceeds arising from activities under this Act which affects land belonging to the public free school fund, the permanent University fund and the permanent fund of the several asylums shall be credited to the permanent fund of said institutions and the proceeds arising from the activities affecting other areas shall be credited to the Game, Fish and Oyster fund.

SECTION 18. The owner of a file or permit or lease under any provision of this Act may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated or in the county to which such county may be attached for judicial purposes and same shall be filed in the general Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar, and if not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable; provided further, a sublease contract need not be filed in the General Land Office.

SECTION 19. If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to the development of the area within the time required, or should the owner of a permit fail or refuse to preceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or should the owner of a permit fail or refuse to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to proceed in good faith and with reasonable diligence and in a bona fide effort to develop, operate and put out the mineral or other substance at any time during the life of the lease, or should the owner of a lease fail or refuse to make proper remittances in payment of royalty or other payments or fail or refuse to make the proper statement, or fail to furnish the required evidence of the output and market value and material matters relating thereto when requested,

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or fail to make the annual payment on the area when requested so to do the permit or lease, as the case may be, shall be subject to forfeiture, and when the Commissioner is sufficiently informed of the facts which subject the permit or lease to forfeiture he may declare same forfeited by proper entry upon the duplicate permit or lease kept in the General Land Office. When forfeiture has been declared a notice of that fact shall be mailed to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells, and provided further, that all forfeitures may, within the discretion of the Commissioner be set aside and all rights reinstated before the rights of another intervene.

SECTION 20. An owner of any claim for any mineral or substance included in this Act may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this Act, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress to and from the area embraced in the file, permit, lease or patent. Ten cents per acre shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compnsation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent.

SECTION 21. Neither the filing of an application under any provision of this Act nor the issuance of a permit or lease on any of the unsold land included herein shall prevent the sale of the surface without the minerals and in case of such sale subsequent to the posting of any notice or the filing of an application the purchaser shall not be entitled to the ten cents per acre that is provided for owners of the surface at the time of filing nor shall such owner be entitled to any damages that may be occasioned by the working of any area.

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SECTION 22. All development in water or on islands, marshes, reefs or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner of the General Land Office may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office may cancel a claim, location, file, permit or lease or patent for a failure or refusal of the owner to comply with such rules and regulations as may be adopted.

SECTION 23. Should any mineral or substance within the provisions of this Act, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked for the minerals and substances embraced in such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such mineral or other substance by complying with the provisions of this Act relating to the mineral or substance so discovered but shall not be required to pay either of the additional ten cents per acre to the State or the owner of the surface, and the remaining portion of said area shall be subject to the application of others in the same manner as if there were no pre-existing file thereon.

SECTION 24. If the owner of a claim upon any mineral or other substance named in this Act, other than petroleum and natural gas which has been acquired under any previous statute, should desire to accept the provisions of this Act and operate hereunder he may do so by filing a declaration to that effect in the General Land Office together with the payment required in the particular instance and obtain a permit or lease by complying with the provisions hereof relating thereto. The rights under such acceptance shall begin from the date the declaration is filed and the owner shall have the same rights thereafter as is accorded those who make original filings under this Act.

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SECTION 25. At any time during the life of a permit but prior to accepting a lease upon any area for any mineral or other substance included within the provisions of this Act, except petroleum and natural gas, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain, under the rules governing the issuance of patents to land, a patent for all the minerals that may be in such area except petroleum and natural gas in lieu of the payment of the royalty as provided in this Act; provided, however, one shall pay the prescribed royalty on all minerals and substances put out and disposed of while developing the area prior to obtaining a lease or patent.

SECTION 26. The Commissioner of the General Land Office shall have the general supervision of all matters necessary for the proper administration of this Act and he is authorized to adopt rules and regulations and to alter or amend them from time to time as he may deem necessary for the protection of the interests involved and not inconsistent with the provisions herein.

SECTION 27. Rights acquired under this Act shall be subject to taxation as is other property.

SECTION 28. Chapter 173 approved April 9, 1913, and all other laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 29. The fact that portions of the mineral statute are so incongruous and difficult of interpretation as to be almost inoperative and the fact that a law clear in its terms and ample to secure the development of the State's mineral wealth is badly needed and the near approach to the close of the session creates an emergency and an imperative public necessity exists that the constitutional rule which requires bills to be read on three several days in each house be suspended and that this take effect from and after its passage and it is so enacted.

Approved March 16, 1917.

Takes effect 90 days after adjournment.

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GENERAL LAWS, SECOND CALLED SESSION 36TH LEGISLATURE, PAGE 249.

AN ACT TO PROMOTE THE DEVELOPMENT OF OIL AND GAS RESOURCES OF THE STATE OF TEXAS IN PUBLIC LANDS.

AN ACT

To be entitled

An Act to promote the development of oil and gas resources of the State of Texas in Asylum, University and public free school lands, constituting the owner of the soil, the agent of the State in procuring said development in certain instances and in the manner provided herein, and in consideration for said services, relinquishing to and vesting in the owner of the soil an undivided fifteen-sixteenth of all oil and gas and the value of the same that may be within or upon all surveyed public free school and asylum land and portions of same which have heretofore been sold and which may hereafter be sold with a mineral classification or with a mineral reservation, and reserving to the public free school and asylum funds the remaining undivided one-sixteenth and the value of same; authorizing the owner of the soil to sell or lease same for the development of the oil and gas that may be therein and securing to said funds their portion thereof; providing for the drilling of offset wells; providing for the forfeiture of oil and gas rights or failure to comply with the law and for the reinstatement of forfeited rights; providing for a combination of oil and gas permits and for the extension of time in which to begin and complete development upon payment of sums due under the terms of the permits, providing for the assignment of permits and leases; providing for the relinquishment of the whole or part of a permit; providing that permits on University land shall come within certain provisions of this Act; providing that payment per acre and obligations to pay royalty shall, when paid, be in lieu of damages to the soil; providing that rights secured under

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former law shall not be affected except as changed or modified by this Act and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. To promote the active co-operation of the owner of the soil and to facilitate the development of its oil and gas resources the State hereby constitutes the owner of the soil, its agent for the purposes herein named, and in consideration herefore, relinquishes to and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas and the value of the same that may be upon or within the surveyed free school and asylum lands and portions of such surveys that have heretofore been sold with a mineral classification and that which may hereafter be sold with a mineral classification or mineral reservation, subject to the terms and conditions of this Act and any future law; and the remaining undivided portion of said oil and gas and the value of same is hereby reserved for the use and benefit of the public free school fund and the several asylum funds.

SECTION 2. The owner of said land is hereby authorized to sell or lease to any person, firm or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions of this Act and the reservation herein, for the benefit of the school and asylum funds. All leases and sales so made shall be assignable; provided that no oil or gas rights shall be sold or leases hereunder for less than ten cents per acre per year, plus royalty, and the lessee or purchaser shall in every case pay to the State ten cents per acre per year of sales and rentals, and, in case of production, shall pay to the State the undivided one-sixteenth of the value of the oil and gas as reserved in Section 1 of this Act; it being expressly provided that all sales or leases of the land made by the owner under this Section of the Act shall, as respects the rental to be paid, be made for and inure to the benefit of the State to the extent herein provided.

Sec. 3. If oil or gas should be discovered in paying quantities on land that is not included in this Act and

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within one thousand feet of land that is so included, the owner, lessee, sub-lessee or receiver or other agent in control of such land as included herein, shall in good faith begin the drilling of an offset well or wells upon such land as is included herein within one hundred days after the first discovery, and prosecute same with diligence to completion. Every offset well shall be drilled to the depth necessary for effective protection against undue drainage by other wells on other lands in that locality.

SECTION 4. If the persons aforesaid, who own or control land included in this Act should fail or refuse to begin such drilling of offset wells thereon within the time required, or fail or refuse to drill such well or wells diligently and in good faith or fail or refuse to drill such well or wells to the depth necessary for the purpose intended, or fail or refuse to use the means necessary to the development of any well or wells drilled thereon, thereupon the relinquishment herein granted shall ipso facto terminate and the rights acquired thereunder shall likewise terminate, and the oil and gas relinquished herein shall revert to and become the property of the State's General Revenue Fund; and when the Commissioner of the General Land Office is sufficiently informed of the facts which so terminate such rights, he shall indorse on the wrapper containing the papers relating to the sale of the land words indicating such termination and sign it officially.

SECTION 5. When the relinquishment granted herein and the rights acquired thereunder shall have been terminated as provided in the preceding section, the Commissioner shall take possession of the land and advertise the oil and gas therein for sale. All such sales shall be made at such times as the Commissioner may determine and in the same manner as is now provided for the sale of public free school land. The sale shall be made to the person, firm or corporation that will pay the highest price therefor in addition to one-eighth of the oil and gas produced or the value of same, which shall be reserved to the public free school fund. The sum received in addition to the reserved one-eighth shall be divided equally between the

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General Revenue Fund of the State and the owner of the soil after deducting the expenses incident to the advertisement and sale. Purchasers at such sales shall begin the drilling of the necessary offset wells within sixty days after the acceptance of their offer and the failure to do so and the failure to comply with the provisions of this Act relating to the drilling of offset wells shall likewise operate as a termination of the rights acquired thereunder and the substances therein shall be subject to sale as herein provided.

SECTION 6. One-sixteenth of the value of the gross production of oil saved and one-sixteenth of the gross production of gas saved and sold off the premises shall be paid to the State and like amounts to the owner of the soil on or before the twentieth day of each month for the preceding month and it shall be accompanied by a sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and sold off the premises, and the market value of same, together with a copy of all daily gauges of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into the pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to production, sale and marketing of oil or gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or the representative of either.

SECTION 7. All sums due the State under the operations of this Act shall be due and payable at Austin, Travis County, and shall be paid to the Commissioner of the General Land Office and he shall transmit all remittances in the form received to the State Treasurer, who shall credit the fund to which the land originally belonged with the amount paid upon production.

SECTION 8. The State shall have a first lien upon all oil and gas produced upon the land to secure the payment of all sums of money that may be due or become due under the provisions of this Act; and the owner of the soil

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shall have a second lien thereon to secure the payment of any sum that may be due him.

SECTION 9. If any person, firm or corporation, operating under this Act should fail or refuse to make the payment of any sum of money due within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to furnish to the General Land Office a correct log of any well, the rights acquired under the permit or lease shall be subject to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which authorize a forfeiture, he shall forfeit same, and the oil and gas shall be subject to sale in the manner as provided in Section five of this Act; except the owner of the soil shall not thereby forfeit his interest in the oil and gas; provided such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene upon satisfactory evidence of future compliance with the provisions of this Act.

SECTION 10. The provisions of this Act relinquishing to the owner of the soil fifteen-sixteenths of the oil and gas in or under such soil is made subject to the rights now existing under valid permits to prospect for oil and gas that have heretofore been issued or which may hereafter be issued upon valid application now on file for such permit; and the rights secured under such permits or applications for permits shall be terminated in the manner provided by the law under which such rights were secured or under the provisions of this Act, but when such rights shall be so terminated, such relinquishments shall be fully effective; provided a relinquishment to the State of a lease that may be producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in such lease.

SECTION 11. If one has heretofore or should hereafter acquire any valid right to the oil and gas in any unsold

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public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when such rights shall be terminated in the manner provided in the law under which such rights were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas therein relinquished and shall be thereafter subject to the provisions of this Act. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the State.

SECTION 12. Permits issued, or to be issued upon applications heretofore filed, or hereafter filed upon any land included in this Act may be assigned as a whole into one ownership or may be grouped or combined into one organization, upon such terms as the owners may agree, and in one or more groups or combinations not to exceed sixteen sections of 640 acres each, more or less, in one group, for the purpose of developing oil and gas. All such assignments and agreements shall be recorded in the county or counties in which the land or part thereof is situated and shall be filed in the General Land Office within sixty days after the execution of the same, accompanied by one dollar as a filing fee.

SECTION 13. The owner of a permit issued upon applications heretofore or hereafter filed shall have eighteen months from the date thereof in which to begin the drilling of a well for oil and gas on some portion of the land included therein. The owner or owners of a combination of permits, held by assignment or agreement shall have a like period of eighteen months from the average date of the permits included therein in which to begin the drilling of a well for oil and gas on some portion of the land included therein, and the drilling on one permit shall be sufficient for the protection against forfeiture of all the permits included in such combination. Owners of permits included herein shall have three years after the date of the permit and the same time after the average date of the permits placed in a combination of permits in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease

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applied for within said time, all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this Act relating to the relinquishment of oil and gas to the owner of the soil.

SECTION 14. If oil or gas should be produced in paying quantities upon any land included in this Act, the owner of the permit shall report the development to the Commissioner of the General Land Office within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased and accompany the application with a log of the well or wells, and the correctness of the log shall be shown by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals.

SECTION 15. The owner of a permit or combination of permits that desire to avail themselves of the terms of this Act shall pay to the State ten cents per acre, annually in advance, for the second and third years and shall likewise pay to the owner of the soil ten cents per acre for the first year of such permit before availing himself of the privileges of this Act, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the Commissioner of the General Land Office and when sufficiently informed of the facts which subjects the permit or permits to forfeiture the said Commissioner shall forfeit the permit or permits by an endorsement of forfeiture upon the wrapper containing the papers relating to the permit or permits and sign it officially. The payment of the ten cents per acre to the owner of the soil may be made in person or by payment to the County Clerk of the county in which the land is situated, and the said clerk shall deposit such payment in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil should refuse to accept such payment, the said clerk shall withdraw such deposit and return same to the owner of the permit or permits. The payment, or the tender of

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payment, shall be evidenced by the receipt of the owner or part owner or County Clerk filed among the papers in the General Land Office relating to such permit or permits.

SECTION 16. The owner of a permit or combination of permits may relinquish to the State a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the county or counties in which the land or a part thereof is situated and file it in the General Land Office within sixty days after its execution, accompanied by one dollar as a filing fee.

SECTION 17. The provisions of this Act, so far as they relate to a combination of permits and extensions of time for beginning development and time for development, shall apply to permits heretofore issued and those hereafter issued upon University land.

SECTION 18. The payment of the ten cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

SECTION 19. All the terms, conditions, limitations and obligations provided in the law under which permits included herein have been or may be issued and rights secured therein shall continue and remain in full force and effect except as changed or modified by this Act.

SECTION 20. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

SECTION 21. The importance of the legislation proposed and the short term of this Special Session creates an emergency and an imperative public necessity exists that the Constitutional rule requiring bills to be read on three separate days in each House should be suspended and that this bill be placed upon third reading and final passage and that it take effect from and after its passage, and it is so enacted.

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GENERAL LAWS, SECOND CALLED SESSION, 36TH LEGISLATURE, PAGE 51.

AN ACT TO PROVIDE FOR LEASING ISLANDS, SALT WATER LAKES, ETC.

AN ACT

To be entitled

To lease islands, salt water lakes, bays, inlets, reefs and marshes owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas, and the unsurveyed public free school lands, for the production of oil and natural gas; authorizing the Commissioner of the General Land Office to adopt necessary rules and regulations in relation thereto; prescribing the terms upon which leases may be issued; providing for the advertisement of the areas before they are leased; prscribing the requirements for applications; providing for the recognition or abandonment of former surveys; prescribing how and when royalty shall be paid; appropriating the proceeds to the public free school fund and the general revenue fund; creating a first lien in favor of the State; providing for offset wells; providing against pollution of water and authorizing the Game, Fish and Oyster Commissioner to enforce rules against such pollution; providing that leases may be transferred or relinquished to the State; providing for forfeiture of leases if the owner should fail or refuse to comply with the law and rules and regulations adopted relative thereto; providing for opening of roads as ways of ingress and egress to and from leased areas; providing for the protection of valid rights heretofore acquired and declaring an emergency.

SECTION 1. All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and the unsurveyed public free school lands shall be included herein and shall be subject to lease by the Commissioner of the General Land Office to any person, firm or corporation for the production of oil and natural gas that may be therein or thereunder in ac-

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cordance with the provisions of this Act, and such rules and regulations as may be adopted by said Commissioner as being necessary to the proper execution of its purposes.

SECTION 2. The areas included herein shall be leased for one-eighth of the gross production of oil, or the value of same, that may be produced and saved and one-eighth of the gross production of gas, or the value of same, that may be produced and sold off of the area, and ten cents per acre in advance the first year and thereafter in advance an additional sum of twenty-five cents per acre for the second year, and fifty cents per acre for the third year and one dollar per acre for each and every year thereafter, not to exceed ten years, that the owner of the lease shall desire to hold the rights granted therein, and until production is secured in commercial quantities, and in addition thereto such sum of money, if any, that one may pay therefor; provided, whenever production shall have been secured in commercial quantities, and the payment of royalty begins and continues to be paid, as provided herein, the owner shall be exempt from further annual payments on the acreage. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which royalty ceased to be paid, and annually thereafter in advance pay one dollar per acre so long as such owner may desire to maintain the rights acquired under the lease not to exceed ten years from the date of said lease.

SECTION 3. The Commissioner of the General Land Office shall fix the day and hour when an area or areas will be subject to lease and he shall advertise or readvertise such area or acreas at least thirty days before such lease date, except as elsewhere provided in the event of tie bids. If there should be no other sufficient means for giving the necessary publicity as to what areas will be subject to lease and the time when applications may be filed the Commissioner shall have lists of such areas printed for free distribution at the expense of the State which expense shall be paid out of the appropriation for public printing. Such lists shall contain a brief designation of the areas subject to lease and the terms upon which they may be

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leased and the time when applications therefor may be filed in the General Land Office.

Section 4. Applications for separate areas and the first payment of ten cents per acre and the sum offered in addition thereto, if any, for any area shall be delivered into the General Land Office on or before the day and hour on which the area will be subject to lease in sealed envelopes on which shall be endorsed in substance "Application to Lease Minerals," and in addition thereto the date the area will be subject to lease. All envelopes so endorsed shall be securely kept by the Commissioner or his chief clerk unopened until the date on which applications are to be opened and at said hour either or both of them shall begin to open the envelopes in the presence of such persons as may desire to be present. All applications received up to the opening hour whether open or sealed, endorsed or not endorsed, shall be considered as properly delivered into the General Land Office. An application which includes two or more areas or is for a price less than the fixed royalty and price per acre shall be void. When an application shall have been filed and considered and the area found to be subject to lease, the lease shall be issued for a term not to exceed twenty-five years to the applicant that pays the most, if any sum, for the area in addition to the fixed price per acre and the stipulated royalty. If production should not be secured in ten years the lease shall terminate and the area again be subject to lease as in the first instance. A duplicate of the lease shall be kept on file in the General Land Office. If two or more persons should offer the same price for the same area and the same should be the highest price offered, all shall be rejected and a date fixed within the discretion of the Commissioner, but not later than the fifteenth day of the following month, when the area will be subject to lease as in the first instance; provided, if the time so fixed should be a date prior to the said fifteenth day of the next month an application at a price less than the former sum offered shall not be considered. All sums paid upon rejected applications shall be returned by the State Treasurer.

SECTION 5. For the purpose of executing the provisions of this Act to the best interest of the State the Commissioner of the General Land Office may recognize or

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decline to recognize any survey or surveys heretofore made of any area included herein. Such survey as may be so recognized shall be advertised and shall be subject to a lease as a whole. Such surveys as may not be so recognized shall be deemed, together with all adjacent unsurveyed areas, as one unsurveyed area, and the said Commissioner shall advertise the whole or designated portions thereof for lease and such whole area or designated portions thereof as may be so advertised shall be subject to lease as a whole according to the advertisement; provided, field notes for such unsurveyed area may, in the discretion of the Commissioner, be required before a lease is issued therefor.

SECTION 6. Royalty equal to one-eighth of the value of the gross production, as herein, provided, shall be paid to the State on or before the twentieth day of each month for the preceding month during the life of the lease, and it shall be accompanied by the sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and saved since the last report, and the amount of gas produced and sold off the area, and the market value of the oil and gas together with a copy of all daily gauges of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks, or pools, and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records, pertaining to the production, transportation, sale and marketing of the oil and gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or the representative of either.

SECTION 7. Royalty and all other sums shall be due and payable to the State at Austin, Texas, and shall be paid to the Commissioner of the General Land Office and he shall transmit all remittances in the form received to the State Treasurer who shall credit the permanent free school fund with all amounts received from the unsurveyed school lands and with two-thirds of the amount so received from other areas and shall credit the general revenue fund

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with the remaining one-third from said other areas. All payments shall be in the form of cash, bank draft on some State or National Bank in Texas, or Postoffice or express money order, or such other form as may be prescribed by law, for making remittances to the State Treasury.

SECTION 8. The State shall have a first lien upon all oil and gas produced upon any leased area to secure the payment of all unpaid royalty and other sum of sums of money that may be due and become due under the provisions of this Act.

SECTION 9. If oil or gas should be produced in commercial quantities in a well on an area privately owned which well should be within one thousand feet of an area leased under this Act, the owner of the lease on such State area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the drilling of an offset well or wells on the area so leased from the State and such offset well or wells shall be drilled to such depth and use such means as may be necessary to prevent the undue drainage of oil or gas from beneath such State area. A log of each well, whether producer or non-producer, shall be filed in the General Land Office within thirty days after the well has been completed or abandoned.

SECTION 10. The development of wells and the development and operation upon the areas included herein shall be done so far as practicable in such manner as to prevent such pollution of the water as will destroy fish, oysters and other sea food and it shall be the duty of the Game, Fish and Oyster Commissioner to enforce such rules and regulationse as may be prescribed for that purpose by the Commissioner of the General Land Office.

SECTION 11. One may transfer his lease at any time and such transfer shall be recorded in the county or counties in which the area or part thereof is situated and within ninety days after the date of its execution the recorded transfer or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee, and thereby the assignee shall succeed to all the rights and be subject to all the obligations and penalties of the original lessee. An owner may relinquish his lease to the

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State at any time by having the relinquishment recorded in the county or counties in which the area or part thereof is situated and within ninety days after the date of its execution the recorded relinquishment or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State.

SECTION 12. If the owner of a lease should fail or refuse to make the payment of any sum due either on the area or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should knowingly make any false return or false report concerning production, royalty, or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith as required by this Act and the rules and regulations adopted by the Commissioner of the General Land Office, or if such owner or his agent should refuse the proper authority access to the records pertaining to the operations under this Act, or if such owner or his authorized agent should knowingly fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well as provided herein, such lease shall be subject to forfeiture by the Commissioner of the General Land Office and when sufficiently informed of the facts which authorize a forfeiture, the Commissioner of the General Land Office shall forfeit same, and the area shall be subject to lease again to another than to such forfeiting owner after due advertisement; provided, such forfeiture may be set aside and the lease and all rights thereunder reinstated before the rights of another interervene upon satisfactory evidence of future compliance with the provisions of this Act and the rules and regulations authorized to be adopted for the purpose of executing its provisions.

SECTION 13. Whenever it may be necessary for the owner of a lease acquired under this Act to enter the enclosed land of another for the purpose of ingress and egress to and from the area so leased from the State and

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such lessee and the owner of enclosure or agent of such owner cannot agree upon the place of such entry, nor the conditions of such entry, the lessee or his agent may petition the commissioners court of the county or counties in which such enclosure may be situated in whole or in part for the opening of such way of ingress and egress aforesaid as may be necessary. Upon the filing of such petition it shall be the duty of said court or courts to proceed to lay out and establish in the manner provided for the laying out of third class public roads, such road or roads as may be necessary for the purposes named herein.

SECTION 14. Nothing in this Act shall be construed to affect or impair valid rights that may have been acquired by virtue of any valid application heretofore filed nor any valid permit or lease heretofore issued upon any area included in this Act, but such rights, obligations, and penalties attaching thereto shall remain in full force and effect so far as it may relate to the areas included herein.

Section 15. So much of Chapter 83, of an Act approved March 16, 1917, as relates to the leasing of the areas included in this Act is hereby repealed so far as it includes and provides for the leasing of said areas.

SECTION 16. The importance of the legislation proposed and the short term of this Special Session creates an emergency and an imperative public necessity exists that the constitutional rule requiring bills to be read on three separate days in each House should be suspended and that this bill be placed upon third reading and final final passage and that it take effect from and after its passage.

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LAWS OF TEXAS, GENERAL LAWS OF THE 37TH LEGISLATURE, PAGE 7.

ACTS OF THE REGULAR SESSION, 37TH LEGISLATURE.

An Act, extending for a period of five years from the date of the permit, on certin specified conditions, all permits to prospect for oil and gas heretofore issued on University land, and Public School land which is unsold at the time this Act goes into effect, and river beds or channels and fresh water lakes and islands therein, which have not expired, and extending for a like period and on like conditions all permits to prospect for oil and gas heretofore issued on said land and said areas and all permits to prospect for oil and gas heretofore issued after the Mineral Act of 1917 went into effect, on island, salt water lakes, bays, inlets, marshes and reefs owned by the State of Texas within tide water limits and that portion of the Gulf of Mexico within the jurisdiction of Texas, which permits have expired at the time this Act goes into effect, but on which the drilling of a well or wells has been begun in good faith or with reference to which permits and the right of the owner of the same to the possession of the area included therein bona fide litigation has existed during the whole or a part of the term of the permit; providing that said permits are extended on the condition that the owner pay to the State annually in advance, during the life of the permit, ten cents per acre, and all past due payments, and that the owner of the permit shall drill, at the direction of the Commissioner of the General Land Office, such offset well or wells as may be necessary to protect the State's interests in the area included in the permit, and shall resume and diligently continue drilling already begun; and authorizing the Commissioner of the Land Office to forfeit the permit for the failure to make the payments aforesaid or to drill the offset well or wells or to resume or continue drilling; providing, that, if oil or gas should be produced in paying quantities, the owner of the permit shall apply for and obtain a lease upon the area without the payment of any additional

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sum of money and for a period not to exceed ten years, subject to renewal or renewals, providing for the filing of affidavits with reference to drilling or pendency of litigation, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That all permits to prospect for oil and gas, heretofore issued on University land, and Public School land which is unsold at the time this Act goes into effect, river beds or channels and fresh water lakes and islands therein, and which have not expired, be and they are hereby extended so that they shall remain in full force and effect for a period of five years from the date of the issuance of the permit, conditioned only upon compliance with the terms of this Act. And that all permits to prospect for oil and gas, heretofore issued on said land and areas and all permits heretofore issued after the Mineral Act of 1917 went into effect on salt water lakes, bays, inlets, marshes, reefs and islands owned by the State within tide water limits and that portion of the Gulf of Mexico within the jurisdiction of Texas, which have expired at the time this Act goes into effect, but on which the drilling of a well or wells, has been begun in good faith, or with reference to which permits and the right of the owner of the same to the possession of the area included therein bona fide litigation has existed during the whole or a part of the term of the permit, be and the same are hereby revived and extended so that they shall remain in full force and effect for a period of five years from the date of the issuance of the permit, conditioned only upon compliance with the terms of this Act.

SECTION 2. The owner of a permit included in this Act shall pay to the State annually in advance during the life of the permit ten cents for each acre included therein and if there should be any payments past due under the terms of the original permit such sum shall be paid within sixty days after this Act becomes effective and if not so paid the term of such permit shall not be extended herein. The Commissioner of the General Land Office may, when necessity occasions, direct the owner of a permit included in this Act to drill such offset well or wells as may be

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necessary for the protection of the State's interest in the area included herein. The owner of a permit revived and extended herein on which the drilling of a well had been begun shall resume such drilling in good faith within such reasonable time after the taking effect of this Act as may be fixed by the Commissioner of the General Land Office and continue same diligently and in good faith.

SECTION 3. The failure to make the payment of the ten cents per acre within the time prescribed herein for past due payments or the failure to make future annual payments within thirty days after same become due or the failure to drill such offset well or wells as may be directed by the Commissioner of the General Land Office or the failure to resume drilling in good faith on expired permits which are revived and extended herein within such reasonable time as may be fixed by the said Commissioner or the failure to continue such drilling diligently and in good faith shall subject the permit to forfeiture by the Commissioner of the General Land Office and when sufficiently informed of the facts which render the permit subject to forfeiture the said Commissioner shall forfeit such permit by an endorsement upon the wrapper in the General Land Office containing the papers relating thereto and sign it officially. A notice of such forfeiture shall be mailed to the Clerk of the county in which such area is situated, and when such notice has been received by said Clerk, the area shall again be subject to be acquired in the manner then provided by the law relating to such area.

SECTION 4. If oil or gas should be produced in paying quantities upon the area included in any of the permits included in this Act, the owner of the permit shall report the development to the Commissioner of the General Land Office within thirty days thereafter, and apply for a lease, accompanying the application with a correct log of the well or wells, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals.

SECTION 5. The owner of a permit which has expired at the time this Act goes into effect shall file in the General

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Land Office, within sixty days after this Act goes into effect, his affidavit showing the facts with reference to the beginning of the drilling of a well or the pendency of litigation, and in the event such owner fails to file such affidavit within said time he shall not be entitled to the benefits of this Act.

SECTION 6. Nothing in this Act shall be construed to apply to permits heretofore issued upon any Free School land that has heretofore been sold and which sales are now in force.

SECTION 7. The fact that many owners of permits included in this Act have, in good faith, spent large sums of money in developing the area included in their permits, and have been unable, on account of unforeseen obstacles and on account of the short duration of the term of the permits, to complete the development; and that a grave injustice would be done such owners if the permits were permitted to lapse, and the fact that the term of the permits is too short to secure adequate development of the mineral resources of the State, creates an emergency and an imperative public necessity exists that the constitutional rule, which requires bills to be read on three several days in each House, be suspended and that this bill be placed upon its third reading and final passage, and that it takes effect from and after its passage; and it is so enacted.

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REGULAR SESSION 37TH LEG. PAGE 121.
OIL AND GAS—PROVIDING FOR THE EXTENSION OF TIME IN WHICH TO DEVELOP.

S. B. No. 117.] CHAPTER 58.

An Act to provide for the extension of time in which to develop oill and gas under permits heretofore issued under the Mineral Act of 1917 upon islands, salt water lakes, bays, inlets, marshes and reefs, owned by the State of Texas within tide water limits and that portion of the Gulf of Mexico within the jurisdiction of Texas, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That all permits to prospect for oil and gas heretofore issued under the Mineral Act of 1917 on islands, salt water lakes, bays, inlets, marshes and reefs, owned by the State of Texas within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and which permits have not been cancelled and have not expired, be and they are hereby extended so that they shall remain in full force and effect for a period of five years from the date of the issuance of the permit conditioned only upon compliance with the terms of this Act.

SECTION 2. The owner of a permit included in this Act shall pay to the State annually in advance during the life of the permit, ten cents for each acre included therein and if there should be any payments past due under the terms of the original permit, such sum shall be paid within sixty days after this Act becomes effective and if not so paid, the term of such permit shall not be extended herein. The Commissioner of the General Land Office may, when necessity occasions, direct the owner of the permit included in this Act to drill such offset well or wells as may be necessary for the protection of the State's interest in the area included herein. The owner of a permit revived and extended herein on which the drilling of a well had been begun, shall resume such drilling in good faith within such reasonable time after the taking effect of this Act as may be fixed by the Commissioner of the General Land Office and continue same diligently and in good faith.

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SECTION 3. The failure to make the payment of the ten cents per acre within the time prescribed herein for past due payments or for failure to make future annual payments within thirty days after same becomes due, or the failure to drill such offset well or wells as may be directed by the Commissioner of the General Land Office, and when sufficiently informed of the facts which render the permit subject to forfeiture the said Commissioner shall forfeit such permit by an endorsement upon the wrapper in the General Land Office containing the papers relating thereto and sign it officially. A notice of such forfeiture shall be mailed to the clerk of the county in which such area is situated and when such notice has been received by said clerk, the area shall again be subject to be acquired in the manner then provided by the law relating to such area.

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GENERAL LAWS OF TEXAS, FOURTH CALLED SESSION, 36TH LEGISLATURE, PAGE 5.

UNIVERSITY LANDS — AUTHORIZING OWNERS OF OIL AND GAS PERMITS TO DESIGNATE UNIVERSITY LAND OIL AND GAS DEVELOPMENT AREAS.

S. B. N. 11.] CHAPTER 4.

An Act authorizing the owner or owners of an oil and gas permit heretofore issued by the State of Texas covering University land, who, individually or in co-operation with the holders of permits covering other University land, has or have performed certain development work thereunder, to designate within sixty days from the date this Act takes effect what shall be known as a University land oil and gas development area to consist of not to exceed six contiguous blocks of University land; providing for the extension of permits covering the lands included in such area for a period of five years from the date of the last permit issued on land included therein, and providing that all development work may be commenced and completed within said time; providing for the issuance of leases on certain quantities of land included in such area if oil or gas in commercial quantities is discovered thereon during the life of such development area; providing that this Act shall not apply to school land; repealing all Acts and parts of Acts in conflict herewith; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The owner or owners of a permit heretofore issued by the State of Texas permitting the holder or holders to prospect for oil and gas on University land under the provisions of the existing laws, who, at the time this Act takes effect, individually or in co-operation with the holders of permits covering other University land, at some point upon the land covered by such permit, has or have drilled a well to a depth of at least two thousand feet, shall have the privilege of filing with the Commissioner of the General Land Office, within sixty days from the date on which this Act goes into effect, an instrument in writing

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designating what shall be called a University land oil and gas development area, which area shall consist of not to exceed six contiguous blocks of University land; provided that the holders of the permits covering land included in such development area, prior to the designation thereof, shall have directly or indirectly contributed to the expense of, or co-operated in the drilling of the above mentioned well, or an additional well or wells located or to be located within said area. Said instrument shall be signed and acknowledged by the owner or owners of the permit covering the land on which said well has been drilled, and a filing fee of one dollar shall be paid the Commissioner of the General Land Office for filing the same. There shall be included in such instrument, or attached thereto, an affidavit of at least three credible persons, citizens of the State of Texas, showing the existence of the facts required for the designation of such development area.

SECTION 2. From and after the designation of any such University land oil and gas development area, all permits covering land therein which at the time of such designation are still in force, upon the payment in advance of the ten cents per acre per annum as now provided by law, may continue in force for a term not to exceed five years from the date of the last permit issued on any of the land included in any such development area, and all development work may be commenced and completed within the said period of five years; provided, if such payment should not be so made on any permit included in such area, such permit in arrears shall be cancelled by the Commissioner of the General Land Office.

SECTION 3. Should oil or gas in commercial quantities be discovered during the life of such development area or a portion thereof, a lease may be issued on one or more contiguous permits not to exceed sixteen sections, for each discovery well as now provided by law. The owner or owners of a permit or permits within such development area may relinquish one or more whole sections or the equivalent thereof, in a solid body of regular form at any time before applying for a lease by having the relinquishment recorded

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in the county where the land is located and filed in the General Land Office accompanied by a filing fee of one dollar.

SECTION 4. This Act is not intended to and shall not be construed to apply to public free school land.

SECTION 5. All laws and parts of laws that conflict with this Act are hereby repealed.

SECTION 6. The fact that it is practically impossible to secure the proper development of the oil and gas in the State University land under the present law, a development which is highly desirable and greatly needed at this time, and the near approach of the close of this session creates an emergency, and an imperative public necessity exists that the Constitutional rule that requires bills to be read on three several days in each House be suspended, and that this Act take effect from and after its passage, and it is so enacted.

Approved October 2, 1920.

Effective October 2, 1920.

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Miscellaneous Laws

GENERAL LAWS, 36TH LEGISLATURE, PAGE 183. AUTHORIZING CITIES AND TOWNS TO LEASE FOR OIL OR OTHER MINERALS AND LANDS OWNED BY SUCH CITY OR TOWN WITH EXCEPTIONS.

S. B. No. 169.] CHAPTER 117.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Any town or City in this State, which has been, or may hereafter be chartered or organized, under the General Laws of Texas, or by Special Act or Charter, in which said City or town may own oil or mineral lands, shall have the power and right to lease such oil or mineral lands for the benefit of such town or city, provided that such town or city shall not lease for such purpose any street or alley or public square in said town or city, or any land therein dedicated by any person or persons to public uses in such town or city; and provided further that no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred (200) feet of any private residence.

SECTION 2. Any laws or parts of Laws in conflict herewith are hereby repealed.

SECTION 3. The importance of this legislation and the fact that this is a regular session of the legislature at which the calender will be in a crowded condition, creates an emergency and an imperative public necessity which requires that the constitutional rule providing that bills shall be read on three several days in each House be suspended and that the same is hereby suspended and this Act shall take effect and be in force from and after its passage and it is so enacted.

Approved March 24, 1919.

Becomes effective 90 days after adjournment.

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GENERAL LAWS, 36TH LEGISLATURE, PAGE 311. RELATING TO INJUNCTIONS RESTRAINING THE DRILLING FOR OIL OR OTHER MINERALS.

S. B. No. 319.] CHAPTER 162.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Title 69 of the Revised Civil Statutes of this State be amended by adding immediately following Article 4643 a new Article to be known as Article 4643A as to read as follows; to-wit:

Article 4643A. No injunction or temporary restraining order, shall be issued by any judge of this State prohibiting any sub-surface drilling or mining operations on the application of any adjacent land owner, claiming injury to his surface or improvements, or loss of, or injury to the minerals thereunder, unless the person, corporation or partnership against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for any injury that may result from drilling or mining operations; provided, however, that the person, corporation or partnership against whom such injunction is sought shall enter into a bond with one or more sufficient sureties, in such sum as the judge hearing the said application and having jurisdiction thereof shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of such drilling or mining operations; provided, that the court may, when he deems it necessary to protect any or all interest involved in such litigation, in lieu of such bond, appoint a trustee with such powers as the court may prescribe or appoint a receiver under the provisions of the statute, to take charge of and hold the minerals produced from the land of the complainant or the proceeds thereof subject to the final disposition of such litigation.

SECTION 2. The crowded condition of the Legislative calendar and the importance of this Legislation, creates an emergency and an imperative public necessity that the

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Constitutional rule requiring that bills be read on three several days be suspended, and the same is hereby suspended, and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

Approved April 3, 1919.

Becomes effective 90 days after adjournment.

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GENERAL LAWS, 35TH LEGISLATURE, PAGE 295. PROVIDING FOR PARTITION OF OIL AND MINERAL LANDS.

S. B. No. 368.] CHAPTER 105.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Article 6096, Chapter 1, Title 101, of the Revised Civil Statutes of the State of Texas is hereby so amended that it shall hereafter read as follows:

"Article 6096. Any joint owner or claimant of any reai estate or of any interest therein or of any mineral, coal, petroleum, or gas lands, whether held in fee or by lease or otherwise, may compel a partition thereof between the other joint owners or claimants thereof in the manner provided in the succeeding articles of this chapter."

SECTION 2. From the fact that there is no law by which joint owners or claimants of mineral, coal, petroleum, or gas lands, whether held in fee or by lease, can compel partition thereof, an emergency is created and an imperative public necessity exists requiring the suspension of the constitutional rule requiring bills to be read on three several days and it is hereby suspended and this act shall take effect and be in full force from and after its passage, and it is so enacted.

Approved March 28, 1917.

Became a law March 28, 1917.

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GENERAL LAWS, 36TH LEGISLATURE, PAGE 185. AUTHORIZING GUARDIANS TO MAKE MINERAL LEASES ON REAL ESTATE OF THEIR WARDS, AND REPEALING CHAPTER 44 OF THE GENERAL LAWS OF THE THIRTY-FOURTH LEGISLATURE.

H. B. No. 189.] CHAPTER 119.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That the guardians of the estates of minors or any other persons, appointed under the laws of the State of Texas, who have heretofore been appointed or who may hereafter be appointed, shall have the authority to make mineral leases upon the real estate belonging to the estates of their wards.

SECTION 2. That whenever a guardian of the estate of any persons shall desire to make a mineral lease upon the real estate of his ward, he shall apply to the county judge of the county where such guardianship is pending for authority to make and execute such mineral lease, and such application shall be in writing and sworn to by such guardian, and the county judge, either in term time or vacation, shall hear such application, and shall require such proof as to the necessity or advisability of such lease, and if he shall approve the same, he shall enter an order on the minutes of the probate court, either in term time or vacation, authorizing the guardian to make such mineral lease, which order shall set out the terms upon which it shall be made; provided, that in the case of such leases executed by guardians of minors, no lease shall extend beyond the time that the ward shall become twenty-one years of age, unless at that time the lessee shall have discovered such minerals as are specified in the lease, or any of such minerals, upon the premises described in such lease, in which event the same shall remain in full force so long as such minerals or any or either of them shall be produced in paying quantities, provided that the marriage of a female ward shall not terminate any lease made hereunder until such ward actually reaches the age of twenty-one years.

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Before such application shall be heard by the county judge, notice of such application shall be given by the guardian for one week prior to the time such application shall be heard by publishing same in some newspaper of the county where said guardianship is pending, for one issue of said paper, and such notice shall state when and where such application shall be heard.

It is further provided that after notice and hearing of said application and the granting of the same by the probate court, that said guardian shall be fully authorized to make the mineral lease upon the real estate of the ward, in accordance with the judgment of the county court acting upon the same.

SECTION 3. Chapter 44, General Laws of the Thirty-Fourth Legislature, approved March 12th, 1915, is hereby repealed.

SECTION 4. Owing to the fact that there is no adequate law in effect authorizing the execution of mineral leases by guardians upon the property of their wards, and owing to the further fact that such laws as are now in force are too restrictive and are retarding development of property for mineral purposes to the detriment of the estates of persons under guardianship, an emergency is created and an imperative public necessity exists for the suspension of the constitutional rule requiring bills to be read on three several days, and that this Act shall be in force from and after its passage, and it is so enacted.

Approved March 24, 1919.

Becomes effective 90 days after adjournment.

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GENERAL LAWS, 36TH LEGISLATURE, PAGE 251. AUTHORIZING LEASE OR SALE OF GAS OR OTHER MINERALS BY EXECUTORS OR ADMINISTRATORS UNDER ORDER OF THE COUNTY COURT.

S. B. No. 385.] CHAPTER 137.

Be it enacted by the Legislature of the State of Texas:

That Chapter 22 of the Revised Statutes of the State of Texas, effective on the first day of September, A. D. 1911, be amended by adding thereto Articles 3480a and 3480b to read as follows:

Article 3480a. Whenever there is real property belonging to the estate of a deceased person that is believed to contain gas, oil, other minerals, or metals, upon application in writing by the executor or administrator, or any heir, devisee or legatee of the deceased interested in such gas, oil, other minerals or metals, or any creditor of the estate whose claim had been allowed and approved or established by suit, the County Court, by an order entered on the Minutes of the Court either in term time or in vacation may direct the lease of such property for the purpose of drilling, mining, and operating for such gas, oil, other minerals or metals; or any part thereof. Such order shall state the minimum bonus, if any, to be received by the executor or administrator under such lease or sale, the minimum royalty to be reserved to the estate under such lease or sale in no event less than 1/8 royalty on oil and such other terms of such lease or sale as the court may desire to embody in such order.

Before such application shall be heard by the County Court notice of such application shall, however, be given by the executor or administrator by publication of such notice in one issue of any newspaper published in the county where such real property is situated, which notice shall appear subsequent to filing of such application and not less than ten days prior to hearing thereon, and which notice shall describe such real property with sufficient accuracy to identify same and shall state the time and place of hearing on such application.

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Article 3480b. The executor or administrator shall in term time or vacation report to the County Court any lease or sale made by him in accordance with the immediately foregoing article within ten days of entry of order authorizing such lease or sale and shall embody in such report, or attach thereto, a full copy of the proposed contract of lease or deed of conveyance evidencing such sale, and such lease or sale shall be approved by the court, with such amendments, if any, as the court may direct, or shall be disapproved by the court at any time within ten days after the filing of such report either in term time or vacation by an order of approval or disapproval entered on the Minutes of said Court. If said lease is approved, the order of approval shall direct the executor or administrator to execute and deliver the lease, contract or deed of conveyance approved on compliance by the other party or parties thereto with the terms thereof; provided that no lease executed under the provisions of this Chapter shall be binding upon heirs, legatees, or distributees of any estate, or on purchasers from said estate unless actual development has been commenced by the time said estate is partitioned and distributed and is being and continues to be prosecuted with reasonable diligence thereafter.

The fact that gas, oil and other mineral and metal lands are being rapidly developed in this State, that oil and gas have been discovered in large quantities in various sections of this State; that in many instances there is danger of loss to estates of deceased persons through operations on tracts adjacent to real property belonging to estates; and that there is now no adequate law authorizing the leasing of real property belonging to such estate or the sale of the gas, oil, other minerals and metals contained therein creates an emergency and urgent public necessity for the suspension of the Constitutional rule requiring bills to be read on three several days in each House and said rule is now here suspended and this Act shall take effect and be in operation from and after its passage. Be it so enacted.

Approved March 24, 1919.

Becomes effective 90 days after adjournment.

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GENERAL LAWS, 35TH LEGISLATURE, PAGE 28. LIENS FOR LABORERS AND MATERIALMEN ON PROPERTY OF OWNERS AND LESSEES OF OIL AND MINERAL LANDS

S. B. No. 71.] CHAPTER 17.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Any person, corporation, firm, association, partnership, materialman, laborer or mechanic, who shall, under contract, express or implied, with the owner of any land, mine or quarry, or the owner of any gas, oil or mineral leasehold interest in land, or the owner of any gas pipe line or oil pipe line, or owner of any oil or gas pipe line right of way, or with the trustee, agent or receiver of any such owner, perform labor or furnish material, machinery or supplies, used in the digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well, water well, mine or quarry, or oil or gas pipe line, shall have a lien on the whole of such land or leasehold interest therein, or oil pipe line or gas pipe line, including the right of way for same, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished, and upon said oil well, gas well, water well, oil or gas pipe line, mine or quarry for which same are furnished, and upon all of the other oil wells, gas wells, buildings and appurtenances, including pipe line, leasehold interest and land used in operating for oil, gas and other minerals, upon such leasehold or land or pipe line and the right of way therefor, for which said material and supplies were furnished or labor performed. Provided, that if labor supplies, machinery, or material is furnished to a leaseholder the lien hereby created shall not attach to the underlying fee title to the land.

SECTION 2. Any person, corporation, firm, association, partnership or materialman, who shall furnish such machinery, material or supplies to a contractor or subcontractor, or any person who shall perform such labor under a sub-contract with a contractor, or who as an artisan or day laborer in the employ of such contractor

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or sub-contractor, shall perform any such labor, shall have a lien upon the said land or leasehold interest therein, or oil pipe line or gas pipe line, including the right of way therefor, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished, and upon said oil well, gas well, water well, oil or gas pipe line and the right of way therefor, mine or quarry, for which same are furnished, and upon all of the other oil wells, buildings and appurtenances, leasehold interest, oil or gas pipe line including right of way, or land used in the operating for oil, gas or other minerals upon said leasehold or land for which said material and supplies were furnished and labor performed, in the same manner and to the same extent as the original contractor, for the amount due him for material furnished or labor performed.

SECTION 3. The lien herein provided for shall attach to the machinery, material, supplies and the specific improvements made, in preference to any prior lien or encumbrance or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies or specific improvements are placed or located, provided however, that any lien, encumbrance, or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided, for, shall not be affected thereby; and the holders of such liens upon such land or leasehold interest shall not be necessary parties in suits to foreclose the liens hereby created.

SECTION 4. The liens herein created shall be fixed and secured and notice thereof shall be given and such liens shall attach and be enforced in the same manner, and materialman's statement, or the lien of any laborer herein mentioned shall be filed and recorded within the same time, and in the same manner as provided for in Chapter 2, Title 86, entitled "Liens," of the Revised Statutes of 1911 of the State of Texas, relating to liens for mechanics, contractors, builders and materialmen as the same now exists or may hereafter be amended. Whenever any person shall remove any such property to a county other than the one in which the lien has been filed, the lien

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holder may within 90 days thereafter file an itemized inventory of the property so removed, showing how much there is due and unpaid thereon, with the clerk of the county to which it has been removed, which shall be recorded in the materialman's lien records of such county, and such filing shall operate as notice of the existence of the lien and the lien shall attach and extend to the land or leasehold and other premises, properties and appurtenances to which said properties so removed shall attach, of the kind and character enumerated in Sections one and two hereof.

SECTION 5. When the lien herein provided for shall have attached to the property covered thereby, neither the owner of the land nor the owner of said oil, gas or mineral leasehold interest therein, nor the owner of any gas pipe line or oil pipe line nor the contractor, nor the sub-contractor, nor the purchaser, nor the trustee, receiver or agent, of any such owner, lessor, lessee, contractor, sub-contractor or purchaser, shall either sell or remove the property subject to said lien or cause same to be removed from the land or premises upon which they were to be used, or otherwise sell or dispose of the same, without the written consent of the holder of the lein hereby created; and in case of any violation of the provision of this article, the said lien holder shall be entitled to the possession of the property upon which said lien exists wherever found, and to have the same then sold for the payment of his debt, whether said debt has become due or not.

SECTION 6. If any person shall remove any property the same then sold for the payment of his debt, whether or any part thereof covered by the lien hereby created from the place where it was located when the lien herein provided for shall have been filed of record, without the written consent of the owner and holder of said lien, with intent to defraud the person having such lien, either originally or by transfer, he shall be deemed guilty of a misdemeanor, upon conviction thereof, shall be punished by a fine of not less than five nor more than five hundred dollars.

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SECTION 7. The provisions of this Act shall not be construed to deprive or abridge materialmen, artisans, laborers, or mechanics of any rights and remedies, now given them by law, and the provisions of this Act shall be cumulative of the present lien laws.

SECTION 8. Nothing in this Act shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated to be paid in the contract under which such material is furnished, or labor performed.

SECTION 9. It is hereby provided that if any of the provisions of this Act, shall, for any reason, he held to be invalid or unenforcible, the remainder of this Act shall, nevertheless, not be affected hereby, but shall remain in full force and effect.

SECTION 10. There being no law protecting laborers and materialmen for labor performed for owners of lands, mines or quarries or owners of leaseholds for oil, gas, pipe lines or rights of way for mining or quarrying purposes, creates an emergency and imperative public necessity exists that the constitutional rule requiring bills to be read on three several days be and the same is hereby suspended and that this Act take effect and be in force from and after its passage, and it is so enacted.

Approved February 13, 1917.

Takes effect 90 days after adjournment.

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GENERAL LAWS, 36TH LEGISLATURE, PAGE 128. REQUIRING QUARTERLY REPORTS TO THE COMPTROLLER BY INDIVIDUALS, ETC., PRODUCING OIL, AND FIXING ONE AND ONE-HALF PER CENT TAX ON GROSS PRODUCTION.

H. B. No. 257.] CHAPTER 77.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Article 7383 of the Revised Civil Statutes of the State of Texas, of 1911, be so amended as to hereafter read as follows:

Article 7383. Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other State or territory or of the United States, or any foreign country which own, controls, manages or leases any oil well within this State shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association showing the total amount of oil produced during the quarter next preceding and the average market value thereof during said quarter. Said individuals, companies, corporations and associations at the time of making said report shall pay to the Treasurer of the State of Texas an occupation tax for for the quarter beginning on said date, equal to one and one-half (1½%) per cent of the total amount of oil produced in this State by said individuals, companies, corporations or associations respectively, during the quarter next preceding at the average market value thereof, as shown by said report.

Article 7383a. Each and every individual, company, corporation, or association, mentioned in Article 7383, as above set forth, shall cause to be made, and to be kept and preserved, a full and complete record of all oil produced during the time so engaged in its production and said record shall be open to the inspection of all tax officers of this State.

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SECTION 2. The fact that the oil producers of this State have the benefit of the protection of the law and are paying an inadequate gross receipts tax creates an emergency and an imperative public necessity, that the constitutional rule requiring bills to be read on three several days be suspended, and the same be and is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Approved March 17, 1919.

Became effective March 17, 1919.

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Conservation Laws

GENERAL LAWS, 36TH LEGISLATURE, PAGE 285.
OIL AND GAS CONSERVATION LAW.

S. B. No. 350.] CHAPTER 155.

An Act to conserve the oil and gas resources of the State of Texas.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. Natural gas and crude oil or petroleum shall not be produced in the State of Texas in such manner and under such condition as to constitute waste. The term "waste" in addition to its ordinary meaning shall include (a) escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum; but this is not intended to have application to gas pockets in high points in strata recognized as oil strata; (b) drowning with water of a gas stratum capable of producing gas in commercial quantities; (c) underground waste; (d) the permitting of any natural gas well to wastefully burn; (e) the wasteful utilization of such gas; (f) burning flambeau lights, except when casing head gas is used in same; provided, not more than four may be used in or near the derrick of a drilling well, and (g) the burning of gas for illuminating purposes between 8 o'clock a. m. and 5 o'clock p. m., unless the use is regulated by meter.

ARTICLE 2. Whenever natural gas in such quantity or quantities, in a gas bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters. All operators, contractors, or drillers, pipe line companies, gas distributing companies drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance

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with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations, storage or in piping or distributing and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes.

ARTICLE 3. It shall be the duty of the Railroad Commission to make and enforce rules and regulations for the conservation of oil and gas; it shall have authority to prevent the waste of oil and gas in drilling and producing operations and in the storage, piping and distribution thereof, and to make rules and regulations for that purpose; it shall be its duty to require dry or abandoned wells to be plugged in such way as to confine oil, gas and water in the stratas in which they are found and to prevent them from escaping into other stratas, and to establish rules and regulations for that purpose. It is empowered to establish rules and regulations for the drilling of wells and preserving a record thereof, and it shall be its duty to require such wells to be drilled in such manner as to prevent injury to the adjoining property, and to prevent oil and gas and water from escaping from the stratas in which they are found into other stratas, and to establish rules and regulations therefor; it shall be its duty to establish rules and regulations for shooting wells and for separating oil from gas; it shall have authority to require records to be kept and reports made by oil and gas drillers, operators and pipe line companies and by its inspectors; it is authorized to do all things necessary for the conservation of oil and gas whether here especially enumerated or not, and to establish such other rules and regulations as will be necessary to carry into effect this Act and to conserve the oil and gas resources of the State.

ARTICLE 4. It shall be the duty of the pipe line expert provided for in Section 11, Chapter 30, of the Acts of 1917, to be the supervisor for the Railroad Commission in enforcing its rules and regulations. The Railroad Commission may appoint such deputy supervisors as may be necessary. It shall have the authority to increase the salary of the supervisor to a sum not exceeding $5,000.00 per

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annum and to fix the salaries of the deputies at not exceeding $3,600.00 per annum, all salaries and other expenses of the administration and enforcement of this Act shall be paid out of the funds created in Chapter 30 of the Acts of 1917, and in the manner therein provided. It shall be the duty of the supervisor and his deputies to supervise the plugging of all abandoned wells and the shooting of wells and to conform to the rules and regulations of the Railroad Commission, dealing with the production and conservation of oil and gas.

ARTICLE 5. Owners or operators of gas wells shall, before connecting with any oil or gas pipe lines, secure from the Railroad Commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Railroad Commission. Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish certificate from the Railroad Commission that the conservation laws of the State have been complied with, provided this Act shall not prevent a temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State.

ARTICLE 6. It is hereby made the duty of all owners or operators of oil and gas wells to keep books showing the amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property and the disbursements made in connection with or for the benefit of such business which books shall be kept open for the inspection of the Railroad Commission or any accredited representative thereof; and of any stockholder or shareholder in said business and any owner or operator refusing to comply with the provisions of this article shall be subject to the penalties imposed by this Act.

ARTICLE 7. In addition to any penalty that may be imposed by the Railroad Commission for contempt, any firm, person, corporation or any officer, agent or employee

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thereof, directly or indirectly violating the provisions of this Act or the orders or regulations of the Railroad Commission made in pursuance thereof, shall be subject to a penalty of not more than five thousand ($5,000.00) dollars, to be recovered in any court of competent jurisdiction, such suit to be brought in the name of the State of Texas, and to be instituted and conducted by any county or district attorney, on the direction of the Railroad Commission. Each day that such violation continues shall be considered a separate offense.

ARTICLE 8. This Act shall be cumulative of all the laws of this State which are not in direct conflict herewith, regulating the conservation of oil and gas, but it shall repeal all laws or parts of law in conflict with its provisions.

ARTICLE 9. If any of the provisions of this Act shall be held unconstitutional, or for any other reason shall be held void, such holdings shall not have the effect to nullify the remaining parts of this Act, but the parts not so held to be void shall nevertheless remain in full force and effect.

ARTICLE 10. Whereas, there is now no law in this State regulating corporations, persons or associations of persons engaged in the production of oil and gas, and adequately conserving these resources, and whereas great waste of gas is now daily occuring in the oil fields of Texas; now, therefore, it is hereby declared that an emergency exists creating an imperative public necessity for the suspension of the constitutional rule requiring biils to be read on three several days, and the same is hereby suspended and this law shall take effect and be in force from and after its passage, and it is so enacted.

Approved March 31, 1919.

Took effect June 18, 1919.

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GENERAL LAWS OF SECOND CALLED SESSION, THIRTY-SIXTH LEGISLATURE, PAGE 79, REQUIRING OWNERS AND OPERATORS OF OIL AND GAS WELLS TO KEEP ACCURATE RECORDS OF OIL AND GAS PRODUCED, AND KEEP BOOKS OPEN TO INSPECTION BY THE RAILROAD COMMISSION.

"Be it enacted by the Legislature of the State of Texas:

"SECTION 1. It is hereby made the duty of all owners and operators of oil and gas wells to keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Railroad Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Railroad Commission of Texas for its information, when required by the Commission to do so. Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights, or the transportation of oil or gas by pipe line, shall immediately file with the Railroad Commission of Texas, at Austin, the name of the company or organization, giving the name and postoffice address of the organization, the plan under which it was organized, and the names and postoffice addresses of the trustee or trustees thereof, and the names and postoffice addresses of the officers and directors. Any person, firm, joint stock association, corporation or other organization, or the agent thereof, refusing to comply with any of the provisions of this section, shall be subject to all

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the fines and penalties imposed by Article 7, Chapter 155, Acts of the Regular Session of the Thirty-sixth Legislature, approved March 31, 1919.

"SECTION 2. All salaries and expenses necessary to enforce the provisions of Chapter 155, Acts of the Regular Session of the Thirty-sixth Legislature, to conserve the oil and gas resources of the State, shall be paid out of the fund created by Section 11, Chapter 30, Acts of the Regular Session of the Thirty-fifth Legislature.

"SECTION 3. This act shall be cumulative of all other laws for the conservation of oil and gas and the control of pipe lines.

"SECTION 4. Whereas, the present law does not require drillers, owners, operators and other persons drilling or owning oil or gas wells to furnish the Railroad Commission the information required in Section 1, and does not require organizations drilling, owning, or operating oil or gas wells to furnish the Commission with complete information concerning said organization, creates an emergency and an imperative public necessity requiring the suspension of the constitutional rule requiring bills to be read on three several days, and said rule is hereby suspended, and this law shall take effect and be in force from and after its passage, and it is so enacted."

Approved July 25, 1919.

Took effect July 25, 1919.

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CONSERVATION RULES AND REGULATIONS.

OFFICE OF
RAILROAD COMMISSION OF TEXAS.
OIL AND GAS CIRCULAR NO. 11.

Austin, Texas, July 26, 1919.

In pursuance of the provisions and requirements of Chapter 155, Acts of the Regular Session of the Thirty-sixth Legislature of Texas, approved March 31, 1919, being "An Act to Conserve the Oil and Gas Resources of the State of Texas, to Define 'Waste,'" etc., and in pursuance further of notice given by Oil and Gas Circular No. 8, issued June 18, 1919, and of public hearing held by this Commission on July 8, 1919, it is hereby ordered by the Railroad Commission of Texas that Oil and Gas Circular No. 7, issued June 18, 1919, be and the same is hereby canceled, and that the following Rules and Regulations be and the same are hereby adopted and prescribed by said Commission for observance, on and after July 26, 1919, until changed by said Commission, by all owners, operators, contractors, drillers, pipe line companies, and gas distributing companies drilling for or producing crude petroleum or natural gas, or piping oil or gas for any purpose, in this State.

Rule 1. Waste Prohibited.—Natural gas and crude oil or petroleum shall not be produced in the State of Texas in such manner and under such conditions as to constitute waste.

Rule 2. "Waste" Defined.—The term "waste" as above used, in addition to its ordinary meaning, shall include:

(a) Escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum; but this is not intended to have application to gas pockets in high points in strata recognized as oil strata;

(b) Drowning with water of a gas stratum capable of producing gas in commercial quantities;

(c) Underground waste;

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(d) The permitting of any natural gas to wastefully burn;

(e) The wasteful utilization of such gas;

(f) Burning flambeau lights except when casing head gas is used in same; provided, not more than four may be used in or near the derrick of a drilling well, and

(g) The burning of gas for illuminating purposes between eight o'clock a. m. and five o'clock p. m., unless the use is regulated by meter.

Rule 3. Gas to Be Confined—Strata to Be Protected. —Whenever natural gas in commercial quantities, in a well defined gas-bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. This rule shall not apply to the Gulf Coast oil fields of Texas; nor shall this rule, as to the fields in which it applies, prevent the drilling deeper in search for oil in any well, if such drilling shall be prosecuted with diligence and if said gas be confined in its stratum and protected as aforesaid upon completion of such well; but at any time after the expiration of seven (7) days from the penetration of such gas-bearing stratum, even though such drilling deeper is being prosecuted with diligence, the Railroad Commission, or its Conservation Agent or any deputy of the latter, may require such gas-bearing stratum to be cased off and so protected, if in their judgment it shall be reasonably necessary and proper to do so.

Rule 4. Approved Methods of Preventing Waste to Be Used.—All operators, contractors or drillers, pipe line companies, or gas distributing companies, drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and

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producing operations, storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes.

Rule 5. "Commercial Quantities" Defined.—Any gas stratum showing a well defined gas sand and producing gas shall be considered capable of producing gas in commercial quantities, and any gas coming from such a stratum or sand shall be considered a commercial quantity, and such stratum or sand shall be protected the same as under Rule 3.

Rule 6. Gas to Be taken Ratably.—Whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm or corporation having the right to drill into and produce gas from any such common source of supply may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply, having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Railroad Commission of Texas may, by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable.

Rule 7. Commission Will Regulate the Taking of Natural Gas.—The Railroad Commission of Texas will, as occasion arises, prescribe rules and regulations for the determination of the natural flow of any well or wells in this State, and will regulate the taking of natural gas from any and all common sources of supply within the State so as to prevent waste, protect the interests of the public and of all those having a right to produce therefrom; and to prevent unreasonable discrimination in favor of one common source of supply as against another.

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Rule 8. Gas to Be Metered.—All gas produced from the deposits of this State when sold shall be measured by meter, and each gas well, or the entire property on which it is located, shall be equipped with such meter.

Rule 9. Notice of Intention to Drill, Deepen or Plug.—Notice shall be given to the Railroad Commission of Texas or its agents of the intention to drill, deepen or plug any well or wells and of the exact location of each and every such well. In case of drilling, notice shall be given at least five (5) days prior to the commencement of drilling operations.

Notice of intention to plug must be given at least twenty-four (24) hours prior to beginning of plugging, and must be accompanied by a complete log of the well, on forms prescribed by the Railroad Commission of Texas.

Blanks for notification and reports can be obtained by application to the Railroad Commission of Texas or its conservation agent in the field.

Rule 10. Plugging Dry and Abandoned Wells.—(a) All abandoned or dry wells shall immediately be plugged according to the following rules:

(b) Manner of Plugging.—All dry or abandoned wells must be plugged by confining all oil, gas or water in the strata in which they occur, by the use of mud-laden fluid, or by some other method approved by the Commission. In case of cable-drilling, cement and plugs may be used.

(c) Notice of Intention to Plug.—Before plugging dry and abandoned wells, notice shall be given to the Railroad Commission of Texas or its conservation agent in the field, and to all available adjoining lease and property owners, and representatives of such lease and property owners may, in addition to the oil and gas conservation agent of the Commission, be present to witness the plugging of these wells if they so desire, but plugging shall not be delayed because of failure or inability to deliver notices to adjoining lease and property owners.

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Rule 11. Log and Plugging Record to Be Filed with Commission.—The owner or operator shall, upon the completion of any well, file with the Railroad Commission of Texas a complete record or log of the same, duly signed and sworn to, upon blanks to be furnished by the Commission upon application; and upon plugging any well for any cause whatever, a complete record of the plugging thereof shall be made out and duly verified on blanks to be furnished by the Commission.

Rule 12. Proper Anchorage to Be Laid.—Before any well is begun in any field where it is not known that high pressure does not exist, proper anchorage shall be laid so that the control casing-head may be used on the inner string of casing at all times, and this type of casing-head shall be kept in constant use unless it is known from previous experience and operations on wells adjacent to the one being drilled that high pressure does not exist or will not be encountered therein.

Rule 13. Equipment for Conserving Natural Gas Shall Be Provided Before "Drilling-in."—In all proven or well-defined gas fields, or where it can reasonably be expected that gas in commercial quantities will be encountered, adequate prepaartions shall be made for the conservation of gas before "drilling-in" any well.

Rule 14. Separate Slush Pit to Be Provided.—Before commencing to drill a well, a separate slush pit or slump hole shall be constructed by the owner, operator or contractor for the reception of all pumpings from clay or soft shale formations in order to have the same on hand for the making of mud-laden fluid.

Note.—In order to avoid freezing casing, operators are cautioned not to allow sand or lime to be mixed with clay or soft shale pumpings.

Rule 15. Wells Not to Be Permitted to Produce Oil and Gas from Different Strata.—No wells shall be permitted to produce both oil and gas from different strata unless it be in such manner as to prevent waste of any character to either product and in accordance with Rule 3.

Rule 16. Strata to Be Sealed Off.—No well shall be

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drilled through or below any oil, gas or water stratum without sealing off such stratum or the contents thereof, after passing through the sand, either by the mud-laden fluid process or by casing and packers, regardless of volume or thickness of sand; provided this rule shall be subject to Rule 3 as that rules relates to natural gas.

Rule 17. Density of Mud-Fluid Where Well Containing Water is Drilled Into Oil or Gas-Producing Strata.—No operator shall drill a well into a known oil or gas-producing sand with water from a higher formation in the hole, or with a sufficient head of water introduced into the hole to prevent gas blowing to the surface. The well shall either be allowed to blow until the same has been drilled-in or it shall be drilled in under a head of fluid consisting, when necessary, of not less than 25 per cent mud; but in no case shall gas be allowed to blow for a longer period than three (3) days after completion of well. Mud-laden fluid used for protecting oil and gas-bearing sands in upper formations while oil or gas is being produced from deeper formations should have a density of not less than 25 per cent mud and should contain not less than 28 per cent mud.

Rule 18. Mud-laden Fluid to Be Applied in Pulling or Redeeming Casing.—No outside casing from any oil or gas well in an unexhausted oil or gas field, shall be pulled without first flooding the well with mud-laden fluid behind the inside string of casing, after unseating the casing, and as casing is withdrawn, well shall be kept full to top with said mud-laden fluid and same shall be left in the hole; and said mudladen fluid shall be so applied as to effectively seal off all fresh or salt water strata, and all oil or gas strata not being utilized.

Rule 19. Mud-laden Fluid—When to Be Applied to Completed Wells.—When necessary (or in any event when ordered by the Railroad Commission of Texas) to seal off any oil, gas or water sand, casing shall be seated in mud-laden fluid; and concerning wells already drilled, the operator shall, upon the order of the Railroad Commission of Texas, raise any string or strings of casings

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and re-seat them in mud-laden fluid when it is thought advisable to do so in order to avoid existing underground waste, pollution or infiltration.

Rule 20. Fresh Water to Be Protected.—Fresh water, whether above or below the surface, shall be protected from pollution, whether in drilling or plugging.

Rule 21. Separating Devices.—Where oil and gas are found in the same stratum and it is impossible to separate the one from the other, the operator shall, upon being so ordered by the Railroad Commission of Texas, install a separating device of approved type, which shall be kept in place and used as long as necessity therefor exists, and after being installed, such device shall not be removed, nor the use thereof discontinued, without the consent of the Railroad Commission of Texas.

Rule 22. Gas Wells Not to Produce from Different Sands at the Same Time Through the Same String of Casing.—No gas well shall be permitted to produce gas from different levels, sands or strata at the same time through the same string of casing, and when gas upon being found is not needed for immediate use, the same shall be confined in its original stratum until such time as the same can be produced and utilized without waste, and in confining gas to its original place the mud-laden fluid process shall be used unless the character of the formation involved is sufficiently ascertained and understood to know that the casing and packer method with Braden-head attachment can be safely applied and competently used, and in the use of the casing, packing and Bradenhead method, separate strings of casing shall be run to each sand.

Rule 23. Shooting of Wells.—(a) All shooting of wells shall be under rules and regulations of the Railroad Commission of Texas.

(b) Wells Not to Be Shot Into Salt Water.—No well shall be so shot as to let in salt water or other foreign substance injurious to the oil or gas sand.

(c) Reports to Be Made to the Railroad Commission of Texas.—Reports shall be made to the Railroad

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Commission of Texas on all wells shot, showing the condition of the well before and after shooting, including the size of the shot, sand or sands shot, production before and after shooting, per cent of water in well before and after shooting.

(d) Damaged Wells to Be Abandoned.—In case irreparable injury is done to the wells, or to the oil or gas sands by shooting, the well shall immediately be abandoned and plugged as provided by Rule No. 10.

(e) Notice of Intention to Shoot.—Notice of intention to shoot must be given the Railroad Commission of Texas, on blank form prescribed by it, at least two (2) days prior to shooting.

Rule 24. Gauge to Be Taken—Reports to Commission.—All oil and gas operators shall, between the first and tenth of each month, take the rock pressure of all wells producing natural gas which is being marketed, and shall forthwith report to the Railroad Commission of Texas, on gauge blanks furnished by the Commission.

Rule 25.—Production of Gas to Be Restrained to Fifty Per Cent of Potential Capacity.—When the gas from any well is being used, the flow or production thereof shall be restrained to fifty (50) per cent of the potential capacity of the same; that is to say, in any day (24 hours) the well shall not be permitted to flow or produce more than one-half of the potential capacity thereof as shown by the last monthly gauge; provided, that this rule shall not apply to casing-head gas, and provided further that, in cases of emergency, greater production may be used after special authority therefor has been secured from the Railroad Commission of Texas.

Rule 26. Notification of Fires and Breaks or Leaks.—All drillers, operators, pipe line companies, and individuals operating oil and gas wells or pipe lines shall immediately notify the Railroad Commission of Texas by letter of all fires which occur at oil or gas wells or oil tanks owned, operated, or controlled by them or on their property, and shall immediately report all tanks struck

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by lightning and any other fires which destroy crude oil or natural gas, and shall immediately report, in the manner heretofore described, any breaks or leaks in tanks or pipe lines from which oil or gas is escaping. In all reports of fires, breaks, or leaks in pipes, or other accidents of this nature, the location of the well, tank or line break shall be given, showing location by county and survey. The reports provided for under this rule shall only be required when the loss by fire, breaks or leaks or other accident is material and only as regards losses connected with production or transportation in this State over which the Railroad Commission of Texas has jurisdiction.

Rule 27. Reports from Pipe Line Companies.—The Railroad Commission of Texas will, from time to time, require oil and gas pipe line companies to make reports to the Commission showing wells connected with their lines during any month, the amount of production taken therefrom, names of parties from whom oil and gas are purchased, the amount of oil or gas purchased therefrom; and all oil and gas pipe line companies shall, in addition to the other reports required by the rules of the Commission, furnish to the Commission duplicates of all reports made to the State Comptroller under the oil and gas gross production tax laws. The Commission will, in case of over-production or for any other reason which it deems urgent, require oil or gas pipe line companies to furnish daily reports of the amount of oil or gas purchased or taken from different wells or parties.

Rule 28. Pipe Line Companies—Connection with Oil or Gas Wells.—Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish a certificate from the Railroad Commission of Texas that the conservation laws of the State have been complied with; provided, this rule shall not prevent the temporary connection with any wells or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State.

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Rule 29. Certificates—Showing Compliance with Conservation Laws and Rules Prior to Connection.—Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Railroad Commission of Texas a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Commission; provided that this rule shall not prevent temporary connection with pipe lines in order to take care of production until opportunity shall have been given for securing such certificate; provided, further, that the owners or operators of such wells shall, in a known or proven field, make application for such certificate in anticipation of production.

Rule 30. Drilling Records to Be Kept.—All operators, contractors, or drillers shall keep at each well, while drilling same, accurate records of the drilling, redrilling, or deepening of all such wells, showing all formations drilled through, casing used, and other information in connection with drilling and operation of the property, and any and all of this information shall be furnished to the Railroad Commission of Texas upon request, or to any conservation agent of the Commission.

Rule 31. Conservation Agents to Have Access to All Wells and All Well Records.—Conservation agents of the Railroad Commission of Texas shall have access to all wells and to all well records, and all companies, contractors, or drillers, shall permit any conservation agent of the Commission to come upon any lease or property operated or controlled by them and to inspect any and all wells and the records of said well or wells, and to have access at all times to any and all wells and any and all records of said wells. Provided, that information so obtained by conservation agents shall be considered official and condential information and shall be reported only to the Commission.

Rule 32. Books to Be Kept—Reports to Be Made.—All owners and operators of oil and gas wells in this State shall keep books showing accurately the amount of stock sold and unsold and amount of promotion money

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paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Railroad Commission of Texas or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Railroad Commission of Texas for its information, when required by the Commission to do so. Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights, or the transportation of oil or gas by pipe line, shall immediately file with the Railroad Commission of Texas, at Austin, the name of the company or organization, giving the name and postoffice address of the organization, the plan under which it was organized, and the names and postoffice addresses of the trustee or trustees thereof, and the names and postoffice addresses of the officers and directors.

Rule 33. Notice to Contractors, Drillers and Others to Observe Rules.—All contractors and drillers carrying on business or doing work in the oil or gas fields of the State, as well as leaseholders, land owners and operators generally, shall take notice of and are hereby directed to observe and apply the foregoing rules and regulations; and all contractors, drillers, land owners and operators will be held responsible for infractions of said rules and regulations.

Rule 34. Conservation Agents — Co-operation with Federal Inspectors.—All conservation agents appointed by the Railroad Commission of Texas shall co-operate with and invite the co-operation of the oil and gas inspectors of the United States Bureau of Mines of the Department of the Interior.

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Rule 35. Conservation Agents—To Enforce These Rules.—All conservation agents appointed by the Railroad Commission of Texas shall be governed by, and are charged with the enforcement of, the law and these rules and regulations.

RULE 36. No pipe line, whether a common carrier or not, shall be used to transport oil or gas from any tract of land within the State, except to another tract immediately adjoining, without a permit from the Railroad Commission of Texas. Application for such permit shall be made upon the form prescribed by the Railroad Commission of Texas, and such permit shall be granted when the Railroad Commission of Texas is satisfied, from such application and the evidence in support thereof, and its own investigation that the proposed line is, or will be, so laid, equipped, and managed as to reduce to a minimum the possibility of waste.

Such permit, if granted, shall be valid for only one year, and shall be revocable at any time after hearing had on ten days' notice, if, in the judgment of the Railroad Commission, any line is so unsafe or so improperly equipped or managed as to be likely to cause waste; or, if, in the judgment of the Railroad Commission, the owner or operator of such line, in the operation thereof, is violating the Acts of the Thirty-sixth Legislature, Chapter 155, being an Act to conserve the oil and gas resources of the State of Texas, or any rule or regulation of the Railroad Commission, enacted under or in pursuance of said Act.

RULE 37. No well for oil or gas shall hereafter be commenced nearer than three hundred (300) feet to any other completed or drilling well on the same or adjoining tract or farm; and no well shall be drilled nearer than one hundred and fifty (150) feet to any property line; provided, that the Commission, in order to prevent waste or to protect vested rights, will grant exceptions permitting drilling within shorter distances than as above prescribed, upon application filed fully stating the facts, notice thereof having first been given to all adjacent lessees affected thereby. Rule 37 shall not for the present be enforced within the proven oil fields of the Gulf Coast.

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RULE 38. All maps or sketches of any kind of any separate lease or tract of land filed with the Oil and Gas Department of the Railroad Commission, must be drawn on a scale of four hundred (400) feet to one inch, unless the area involved is less than two acres, when the scale must be forty (40) feet to one inch, or unless the Commission specially grants permission that maps furnished may be drawn on another scale.

RULE 39. (1) All permanent oil tanks or battery of tanks must be surrounded by a dike or ditch of at least the capacity of the tank or battery of tanks.

(2) No flow tank, unless it is entirely buried, or other oil tank of any size shall hereafter be placed nearer than 150 feet to any derrick, rig, building, power plant or boiler of any description, except where topography does not permit.

(3) No field working tank having a capacity of 5,000 barrels or more shall hereafter be built nearer than 200 feet (measured from shell to shell) to any other tank or tanks.

(4) No battery of field storage tanks shall hereafter be placed nearer than 200 feet to any other battery.

(5) Printed signs reading "Dangerous, No Smoking Allowed," or similar words, shall be posted in conspicuous places on each producing lease or farm.

(6) All lessees' premises shall be kept clear of high grass, weeds and combustible trash, within a radius of 100 feet around an oil tank, tanks or producing wells.

(7) Open earthen storage for merchantabe oil is hereafter prohibited, except when the Commission grants special permission in order to meet an unforeseen emergency. Where such storage is now in use, it must be discontinued within a reasonable time.

(8) Swabbing into open pits is prohibited except when testing a well or cleaning out and such swabbing shall not continue for a longer period than ten days, without permission from the Railroad Commission.

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(9) All oil tanks, where there is a gas hazard, shall be well covered and provided with adequate gas vents.

(10) No forge or open light shall be placed inside the derrick of a well showing oil or gas.

(11) Boilers must be equipped with steam lines for fighting fire and must not be set nearer than 100 feet to any producing well.

(12) All oil and gas pipe lines laid upon or across a public road or highway must be buried to a reasonably safe depth.

(13) Wherever available and practicable electric light and power shall be installed in congested drilling areas, upon order of the Commission.

RULE 40. *Vacuum Pumps Prohibited.* The use of vacuum pumps or other devices for the purpose of extracting oil or gas, except casing head gas where the same is utilized, from any well by the vacuum process, is prohibited, except in depleted or practically depleted fields.

This order take effect and be in force on and after July 26, 1919, until amended or canceled by this Commission.

Attest:

ALLISON MAYFIELD, Chairman.
EARLE B. MAYFIELD.
CLARENCE E. GILMORE.
Commissioners.

E. B. MCLEAN, Secretary.

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Pipe Lines

GENERAL LAWS, 35TH LEGISLATURE, PAGE 48. REGULATING PIPE LINES.

S. B. No. 68.] CHAPTER 30.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

(a) Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transportating crude petroleum by pipe line; or

(b) Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

(c) Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public, for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad, corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

(d) Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within the

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State of Texas to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others:

Is hereby declared to be a common carrier and subject to the provisions hereof. But the provisions of this Act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

SECTION 2. It is declared that the operation of those pipe lines, to which this Act applies, for the transportation of crude petroleum, in connection with the purchase or purchase and sale of such crude petroleum, is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this Act to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the Railroad Commission of Texas. It shall be the duty of the Attorney General to enforce this provision by injunction or other adequate remedy.

SECTION 3. The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across or under any public stream or highway in this State, is hereby conferred upon all persons, firms, limited partnerships, joint stock associations, or corporations coming within any of the definitions of common carrier pipe lines as hereinbefore made. Any person, firm, limited partnership, joint stock associa-

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tion, or corporation may acquire the right to construct pipe lines and such incidental telephone and telegraph lines along, across or over any public road or highway in this State, by filing with the Railroad Commission an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the rights so acquired it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed in this Act. This right to run along, across or over any public road or highway, as before provided for, can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the county commissioners' court or other proper local authority. And provided, that in the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road, in the laying of pipe lines, telegraph or telephone lines, along or across the same; and nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated city or town, except by express permission from the city or governing authority thereof; and nothing herein shall be construed to permit any company to use any street or alley of any unincorporated town, except by express permission of the commissioners' court of the county in which such town is situated.

SECTION 4. The Railroad Commission shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules and regulations shall

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be made except after hearing and at least ten days and not more than thirty days' notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

SECTION 5. Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the commission shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as made by the commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the commission, which they are hereby empowered and required to prescribe. The commission is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said commission shall not be construed to limit the general powers conferred by this Act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

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SECTION 6. Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as may be prescribed by said commission, and and the commission shall require them to make reports and may investigate their books and records kept in connection with such business. The commission shall require verified under oath, of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the commission to the reports as to stock of crude petroleum on hand of any particular pipe line; but the commission in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The commission shall have the power and authority to hear and determine complaints, to require attendance of witnesses, pay their expenses out of the fund herein created, and to institute suits and sue out such writs and processes as may be necessary for the enforcement of its orders.

SECTION 7. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportations from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the commission. When there shall

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be offered for transportation more crude petroleum than of such common carrier pipe lines monthly reports, duly can be immediately transported, the same shall be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation or association of persons, exceeding three thousand barrels of petroleum in any one day.

SECTION 8. The commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

SECTION 9. Any common carrier as herein defined who shall violate any provision of this Act or who shall fail to perform any duty herein imposed or any valid order of the commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense, such penalty to be recoverable at suit of the Attorney General of the State of Texas in the name of the State and for its use. Such penalty may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue. For the wilful violations of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents or employes of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor, each violation of such provisions shall be deemed a separate offense and upon conviction thereof the party violating same shall be fined in a sum of not less than fifty dollars nor more than one thousand dollars, and may be further punished by confinement in the county jail for not less than ten days nor more than six months.

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SECTION 10. Subject to the provisions of this Act and the rules and regulations which may be prescribed by the commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

SECTION 11. It shall be the duty of the commission to employ an expert who shall gather information and assist the commission in the performance of its duties under this Act. The salary of this expert shall be at the rate of thirty-six hundred dollars per annum, payable in equal monthly installments. And the commission shall employ such other assistants as may be necessary. These salaries and expenses and the expenses of the hearings and investigations conducted by said commission shall be paid out of a fund to be derived from a tax of one-twentieth of one per cent of the market value of crude petroleum produced within this State, which tax is hereby levied, and which tax shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State treasury as other revenue, and shall be paid out in warrants as other State funds. Any yearly excess of the tax over and above the requirements of the commission shall become a part of the general revenue of the State and any deficit shall be made up out of the general revenue of the State.

SECTION 12. The sum of five thousand dollars is hereby appropriated out of the general revenue of the State not otherwise appropriated for the purpose of paying the salary of the expert for the commission, and other expenses incurred by the commission hereunder until the petroleum tax becomes available.

SECTION 13. The salary of the expert for the commission shall be paid by monthly warrants drawn by the State Comptroller on the State Treasurer. Other expenses

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of the commission, such as traveling expenses, expenses of witness, stenographers and stationery, shall be paid by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman of the commission endorsed thereon.

SECTION 14. This Act shall be cumulative of all the laws of this State, which are not in direct conflict here with, regulating the control of pipe line companies or similar corporations, in this State.

SECTION 15. If any provision of this Act shall be held unconstitutional or for any other reason shall be held to be void, or if more than one provision of this Act shall be held to be void, such holding shall not have the effect to nullify the remaining parts of this Act, but the parts not so held to be void shall nevertheless remain in full force and effect.

SECTION 16. Whereas, there is no law in this State regulating corporations, persons or associations of persons engaged in the business of transporting crude petroleum by pipe line for hire, and no law bringing persons and associations of persons so engaged in the transportation of crude petroleum by pipe lines within the definition of common carriers and public utilities, and no tribunal having jurisdiction thereof, now therefore it is hereby declared that an emergency exists creating an imperative public necessity for the suspension of the constitutional rule requiring bills to be read on three several days and the same is hereby suspended, and this law shall take effect and be in force from and after its passage, and it is so enacted.

Approved February 20, 1917.

Takes effect 90 days after adjournment.

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PIPE LINE RULES.

RAILROAD COMMISSION ORDERS.

PIPE LINE ORDER NO. 5.

(Hearing No. 1931, April 22, 1919)

Austin, Texas, June 5, 1919.

In pursuance of notice given and public hearing held in the above numbered cause, it is hereby ordered by the Railroad Commission of Texas, that every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatever, owning, operating or transported through the pipe lines of the reporting carrier, hereby required to file with the Railroad Commission of Texas, at its office in the City of Austin, on the dates and covering the periods hereinafter specified, reports in writing, verified under oath of the President or other officer of the reporting carrier, showing the following information:

First—(a) The total number of receiving stations established by the reporting carrier for the reception and transportation of crude petroleum through its pipe lines, giving the name or number, if any, by which said stations are designated, the field or district where located, and the county or counties served by each such receiving station.

(b) The total number of delivery stations established by the reporting carrier for the delivery of crude petroleum transported through its pipe lines, giving the name or number, if any, by which said delivery stations are designated, and where located.

(c) The total number of barrels of crude petroleum gathered by each receiving station and run into the pipe lines of the reporting carrier.

(d) The total number of barrels of crude petroleum managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum for the public for hire, or engaged in the business of transporting crude petroleum by pipe line, be and they are between points within the State of Texas, showing separately the number of barrels transported for its own account and the number of barrels transported for others.

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(e) The total number of barrels of crude petroleum delivered by the reporting carrier subsequent to transportation by it, showing to whom delivered and at what station delivered.

The information required by Paragraphs (a), (b), (c), (d) and (e) above shall be furnished by monthly reports, to be filed not later than the 15th day of the month following the calendar month for which the report is rendered, and such reports to begin with the month of June, 1919.

Second—(a) The total amount of tankage, showing barrel capacity, held by the reporting carrier for the storage of crude petroleum, showing separately the amount in wooden tankage, in earthen tankage and in steel tankage, and where located.

(b) The total number of barrels of crude petroleum held in storage by the reporting carrier for others.

(c) The total number of barrels of crude petroleum owned and held by the reporting carrier for its own account.

(d) The total amount of unfilled storage held by the reporting carrier, showing separately the amount in wooden tankage, in earthen tankage and in steel tankage, and where located.

The information required by Paragraphs (a), (b), (c) and (d) above shall be the total storage capacity, the amounts of oil held and the unfilled storage capacity on the last day of each calendar month, to be filed on or before the 15th day of the month following the day for which the report is rendered, and such reports to begin with June 30, 1919.

The information required by the First division of this of this order shall be reported on the same (one) form, and shall be designated as "A" Report."

The information required by the Second division of this order shall be reported on the same (one) form, and shall be designated as "B" Report."

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Pipe Line Order No. No. 2, issued by this Commission under date of July 20, 1917, is hereby canceled.

ALLISON MAYFIELD, Chairman;
EARLE B. MAYFIELD,
CLARENCE E. GILMORE,
Commissioners.

Attest:
E. R. McLEAN,
Secretary.

RAILROAD COMMISSION ORDERS.
OFFICE OF
RAILROAD COMMISSION OF TEXAS.

PIPE LINE RULES AND REGULATIONS.

Austin, Texas, July 26, 1919.

In pursuance of the provisions and requirements of Chapter 30 of the Acts of the Regular Session of the Thirty-fifth Legislature of Texas, approved February 20, 1917, being the Act "Regulating Pipe Lines," and in pursuance further of notice given by Pipe Line Order No. 6, issued by this Commission on June 11, 1919, and of public hearing held on July 8, 1919, it is hereby ordered by the Railroad Commission of Texas that every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatever, owning, operating or managing any pipe line, or any part of any pipe line, for the gathering, receiving, loading, transporting, storing and delivering of crude petroleum, within the State of Texas, as a common carrier, shall be subject to and governed by the following rules and regulations until the same are hereafter modified or changed by other and future general orders of this Commission, or special orders applicable only to particular oil fields.

For the sake of brevity, in these rules and regulations, the common carriers herein specified shall be referred to as "pipe lines," and the owners or shippers of crude petroleum by pipe lines shall be referred to as "shippers."

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Rule 1. All Marketable Oil to Be Received for Transportation.—By the term "marketable oil" is meant any crude petroleum adapted for refining or fuel purposes, properly settled and containing not more than two (2) per cent of basic sediment, water or other impurities above a point six (6) inches below the pipe line connection with the tank. Pipe lines shall receive for transportation all such "marketable oil" tendered; provided, first, no pipe line shall be required to receive for shipment from any person, firm, corporation or association of persons, exceeding 3000 barrels of petroleum in any one day; and, provided, second, if the oil tendered for transportation differs materially in character from that usually produced in the field and being transported therefrom by the pipe line, then it shall be transported under such terms as the shipper and pipe line may agree or the Commission may require.

Rule 2. Basic Sediment, How Determined—Temperature.—In determining the amount of sediment, water or other impurities, the pipe lines are authorized to make a test of the oil tendered for transportation from an average sample from each tank of the oil tendered for transportation, by the use of a centrifugal machine or by the use of any other appliance agreed upon by the pipe line and the shipper. The same method of ascertaining the amount of the sediment, water or other impurities shall be used in the delivery as in the receipt of oil. Pipe lines shall not be required to receive for transportation, nor shall consignee be required to accept as a delivery, any oil of a higher temperature than ninety (90) degrees Fahrenheit, except that during the summer oil shall be received at any atmospheric temperature and may be delivered at like temperature. Consignee shall have the same right to test the oil upon delivery at destination that the pipe line has to test before receiving from the shipper.

Rule 3. "Barrel" Defined.—For the purpose of these rules and regulations, a "barrel' of crude petroleum is declared to be forty-two (42) gallons. United States measurement, at a test of sixty (60) degrees Fahrenheit.

Rule 4. Oil Involved in Litigation, Etc.—Indemnity

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Against Loss.—When any oil tendered for transportation is involved in litigation, or the ownership of which may be in dispute, or which may be encumbered by lien or charge of any kind, the pipe lines may require of shippers an indemnity bond to protect them against all loss.

Rule 5. Storage.—Pipe lines shall provide, without additional charge, sufficient storage, such as is incident and necessary to the transportation of oil, including storage at destination or so near thereto as to be available for prompt delivery to destination point, for five (5) days from the date of offer of delivery at destination.

Rule 6. Identity of Oil, Maintenance of.—Pipe lines. at their election, shall deliver to consignee, either the identical oil received for transportation, subject to such consequences of mixing with other oil as are incident to the usual pipe line transportation, or they may make delivery from their common stock at destination; provided, if this last be done the delivery shall be of substantially like kind and market value.

Rule 7. Minimum Quantity to Be Received.—Pipe lines shall not be required to receive less than one (1) tank carload of oil when oil is tendered for loading into tank cars at pipe line destination. When oil is tendered for transportation for other than tank car delivery, pipe lines shall not be required to receive less than five hundred (500) barrels.

Rule 8. Gathering Charges.—Tariffs to be filed by the pipe lines shall specify separately the charges for gathering of the oil and for the transportation of same and for delivery of same, if any.

Rule 9. Gauging, Testing and Deductions.—All oil tendered pipe lines for transportation shall be gauged and tested by a representative of the pipe line prior to its receipt from the shipper; but the shipper shall at all times have the privilege of being present or represented at the gauging and testing. Quantities shall be computed from correctly compiled tank tables showing two (2) per cent less than the full capacity of the tank in all the oil fields of Texas, except in the coastal oil field, in which the

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tank tables shall be compiled showing one (1) per cent less than full capacity of tank. Corrections may be made for temperature, allowing or deducting at the rate of one (1) per cent for every twenty-five (25) degrees in temperature below or above sixty (60) degrees Fahrenheit. Pipe lines may deduct the full per cent of basic sediment, water and other impurities as the centrifugal or other test agreed upon may show, except that no such deduction shall be made when such test shows only one-half of one per cent or less of such basic sediment, water and other impurities. A further deduction of one (1) per cent for evaporation and loss during transportation shall be made and the net balance shall be the quantity deliverable by the pipe line.

Rule 10. Delivery Tenders and Demurrage.—Pipe lines shall transport oil with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements, but may at any time after receipt of a consignment of oil, upon twenty-four (24) hours' notice to the consignee, tender oil for delivery from its common stock at the point of destination, conformably to Rule 6, at the rate of not exceeding ten thousand (10,000) barrels per day of twenty-four (24) hours. Computation of time of storage (as provided for in Rule 5) shall begin at the expiration of such notice. At the expiration of the time allowed, in Rule 5, for storage at destination, pipe lines may assess a demurrage charge on all oil tendered for delivery and remaining undelivered, at the rate, for the first ten (10) days, of one-tenth of one cent per barrel, during the next ten (10) days at the rate of two-tenths of one cent per barrel, and thereafter at the rate of three-tenths of one cent per barrel for each day of twenty-four (24) hours or fractional part thereof.

Rule 11. Unpaid Charges, Lien For and Sale to Cover.—Pipe lines shall have a lien on all oil to cover charges for transportation, including demurrage, and may withhold delivery of oil until said charges are paid. If such charges shall remain unpaid for more than five (5) days after notice of readiness to deliver, the pipe line, by any agent, may sell said oil at public auction at the General Office of the pipe line, on any day not a Legal Holiday

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and not less than forty eight (48) hours after publication of notice in a daily newspaper of general circulation published in the city where said General Office is located, said notice giving the time and place of the sale and the quantity of the oil to be sold. From the proceeds of the sale the pipe line may pay itself all charges lawfully accruing, including demurrage, and all expenses of said sale, and the net balance shall be held for whomsoever may be lawfully entitled thereto.

Rule 12. Notice of Claims.—Notice of claims for loss, damage or delay in connection with the shipment of oil must be made in writing, to the pipe line within ninety-one (91) days after such shall have accrued; or, in case of failure to make delivery, within ninety-one (91) days after a reasonable time for delivery shall have elapsed.

Rule 13. Telegraph or Telephone Line—Shipper to Use.—Where pipe lines maintain a private telegraph or telephone line, shippers may use the same, without extra charge, for messages incident to shipments. However, the pipe line shall not be held liable for delivery of messages away from its office, for delay in transmission nor for interruption of service.

Rule 14. Contracts of Transportation.—When a consignment of oil is accepted, pipe lines shall give the shipper a run-ticket, and shall thereafter render to the shipper a statement which shall show the amount of oil received for transportation, the points of origin and destination, corrections made for temperature, deductions made for impurities, and the rate for such transportation.

Rule 15. Shipper's Tanks, Etc.—Inspection.—When a shipment of oil has been tendered for transportation, the pipe line, by its representative, shall have the right to go upon the premises where such oil is produced or stored and have access to any and all tanks or storage receptacles for the purpose of making any examination, inspection or test authorized by these regulations.

Rule 16. Apportionment When Tenders Are in Excess of Facilities.—When there shall be tendered to any pipe line, for transportation, more oil than can be imme-

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diately transported, the transportation furnished by the pipe line shall be apportioned among all shippers in proportion to the amounts tendered by each; provided, no tender for transportation shall be considered beyond the amount which the party, requesting the shipment then has on hand accessible to and ready for shipment by the pipe line. The pipe line shall be considered as a shipper of oil produced or purchased by itself and held for shipment through its lines, and its oil shall be entitled to participate in such apportionment.

Rule 17. Interchange of Tonnage.—Pipe lines shall provide the necessary connections and facilities for the exmore pipe lines, when the Railroad Commission of Texas finds that a necessity exists for connection, and under such regulations as said Commission may determine in each case.

Rule 18. Receipt and Delivery, Necessary Facilities For.—Pipe lines shall install and maintain facilities for the receipt and delivery of marketable crude petroleum of shippers at any point on their lines when the Railroad Commission of Texas finds that a necessity exists therefor, and under such regulations as the said Commission may prescribe.

Rule 19. Fires, Lightning and Leakage, Reports of Loss From.—All pipe lines shall immediately notify the Railroad Commission of Texas, by telegraph, telephone or letter, of all fires which occur at oil tanks owned or controlled by them, or tanks struck by lightning, and they shall also in like manner report all breaks or leaks in tanks or pipe lines and from which breaks oil is escaping. All pipe lines shall report in writing, to the Commission by the 15th day of each calendar month, the estimated amount of loss of oil by fire or leakage from tanks and pipe lines for the preceding month; this not to include leakage or evaporation ordinarily and naturally incident to transportation.

No risk of fire, storm, flood or act of God, and no risk resulting from riots, insurrection, rebellion, war or

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act of the public enemy, or from quarantine or authority of law or any order, requisition or necessity of the government of the United States in time of war, shall be borne by the pipe lines, nor shall any liability accrue to them for any damage thereby occasioned; and in case of loss of any crude oil from any such causes, after oil has been received for transportation and before the same has been delivered to the consignee, the shipper shall bear a loss in such proportion as the amount of his shipment is to all of the oil held in transportation by the pipe line at the time of such loss, and the shipper shall be entitled to have delivered only such portion of his shipment as may remain after a deduction of his due proportion of such loss, but in such event the shipper shall be required to pay charges only on the quantity of oil delivered; provided this rule shall not apply in case of negligence of the pipe lines.

Rule 20.—Printing and Posting.—Pipe lines shall have these General Rules and Regulations printed on their tariff sheets, and shall post the same in a prominent place in their various offices for the inspection of the shipping public. They shall post and publish only such Rules and Regulations as may be adopted by the Railroad Commission of Texas as general rules or such special rules as may be adopted for any particular field.

This order shall take effect and be in force on and after August 1, 1919, until modified or canceled by this Commission.

ALLISON MAYFIELD, Chairman;

EARLE B. MAYFIELD,

CLARENCE E. GILMORE,

Commissioners.

Attest:

E. R. McLEAN, Secretary.

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GENERAL LAWS, 36TH LEGISLATURE, PAGE 272. AMENDING THE REVISED CIVIL STATUTES RELATING TO COMMON CARRIER PIPE LINES.

S. B. No. 78.] CHAPTER 146.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Article 1306 of Chapter 24, Title 25, of the Revised Civil Statutes of 1911 be and the same is hereby amended so as hereafter to be and read as follows:

ARTICLE 1306. Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation, and shall have the right to lay its pipes and pipe lines across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway, closer than fifteen feet from the improved section thereof except with the approval and under the direction of the Commissioners Court of the County in which such public highway is located, or under any railroad, railroad right of way, street railroad, canal or stream in this State, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this state, with the consent and under the direction of the board of aldermen or city council of such city or town. The manner and method of such condemnation shall be the same as is provided by law in the case of railroads; provided, that such pipes or pipe lines shall not pass through or under any cemetery, church or college, school house, residence, business or storehouse, or through or under any building in this state, except by the consent of the owner or owners thereof; and provided, further, that all such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well buried under ground at least twenty inches under the surface, and such surface shall be properly and promtply restored by such corporation unless otherwise consented to by the owners of such land; provided, further, that if such pipes or pipe lines shall be laid over

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or along any uncultivated or unimproved lands of another and such lands shall thereafter become cultivated or improved, such pipes or pipe lines, shall be buried by said corporation as herein-before provided, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof; and provided, further, that whenever such pipes or pipe lines shall cross any public road or highway, railroad, street railroad, or street or alley, the said pipes and pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad or street railroad by the owner or owners thereof.

SECTION 2. That every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within the State of Texas for the transportation of crude petroleum that is declared to be a common carrier by and is subject to the provisions of Chapter 30 of the General Laws passed by the Thirty-fifth Legislature, approved February 20, 1917, shall have the right and power of eminent domain, in the exercise of which, he, it or they may enter upon and condemn the lands, rights of way, easements and property of any person necessary for the construction, maintenance or operation of his, its or their common carrier pipe line, the manner and method of such condemnation and the assessment and the payment of the damages therefor to be the same as is provided by law in the case of railroads; and shall have the right to lay his, its or their

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pipes or pipe line across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway, closer than fifteen feet from the improved section thereof except with the approval and under the direction of the Commissioners Court of the County in which such public highway is located, or under any railroad, railroad rights of way, street railroads, canal or stream in this State, and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the board of Aldermen or city council of such city or town, and such other rights in the matter of laying pipes and pipe lines as are conferred by Article 1306 of Chapter 24, Title 25 of the Revised Civil Statutes of Texas of 1911 as amended by this Act, upon corporations organized under said Chapter 24, subject, however, to the conditions, limitations and restrictions therein stated.

SECTION 2a. That every person, firm, corporation, limited co-partnership, joint stock association or associations of any kind whatsoever owning, operating, or managing any pipe line, or any part of any pipe line within the State of Texas for the transportation of fuller's earth for the public for hire, the same are hereby declared to be common carriers, and shall have the rights and power of eminent domain, and may condemn the necessary sites, rights of way and easements, under the same terms, and subject to the same conditions as are conferred by Sections 1 and 2 of this act, on like persons natural or otherwise, owning, operating or managing crude petroleum pipe line or lines.

SECTION 3. That all laws in conflict herewith be and the same are hereby repealed.

The fact that Chapter 30 of the General Laws of the Thirty-fifth Legislature imposed upon persons, firms, corporations, limited partnerships, joint stock associations, and other associations owning and operating pipe lines the duty and burden of being common carriers under certain conditions therein defined, without the corresponding right to condemn lands, rights of way and easements so as to make

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it possible for them to perform their common carrier duties, and the fact that such lack of power will seriously interfere with the construction and operation of pipe lines, the development of the State and the performance for the public of the common carrier duties defined and imposed in said Chapter 30 creates an emergency and imperative necessity that the Constitutional Rule requiring a Bill to be read on three several days be suspended, and that this bill take effect from and after its passage, and it is so enacted.

Approved March 31, 1919.

Became effective March 31, 1919.

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GENERAL LAWS OF TEXAS, THIRD CALLED SESSION, 36TH LEGISLATURE, PAGE 18. PUBLIC GAS UTILITIES—TO REGULATE AND PLACE UNDER JURISDICTION OF RAILROAD COMMISSION.

H. B. No. 11.

"An Act defining and declaring certain natural gas pipe lines and business public utilities as virtual monopolies and subjecting the same to the power and jurisdiction of the Railroad Commission of Texas to regulate and to enact rules, regulations, orders and decisions for the government and conduct of the business of the same, and requiring of said utilities compliance with the same, and safe, sufficient, and adequate service; excepting from this Act plants owned by municipalities; requiring charges of said public utilities subject to this Act for their services or commodities to be just, reasonable, non-discriminatory and adequate, and providing for the reimbursement of charges collected in excess of permitted or reasonable charges to persons entitled thereto conferring on said Commission power to prescribe methods of accounts, to require the filing of reports and schedules, to detrmine the rates, charges, returns and practices of said utilities upon application or its own initiative, prohibiting discrimination in rates, charges or compensations received by said utilities with certain exceptions; providing for retaining control over distributing companies by the municipal governments of the various municipalities, but allowing the utility to appeal to the Commission in certain cases; providing for judicial review of acts, orders, decisions of the said Commission and the conduct thereof and of appeals, and conferring jurisdiction on the District Courts, Courts of Civil Appeals and the Supreme Court in such cases; providing for the enforcement of the Commission's orders, rules, regulations, decisions and the provisions of this Act by mandamus, injunction, mandatory injunction, and receivership and penalties for the violation of same, and conferring jurisdiction on the district courts and providing for appeals subject to this

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Act, to maintain offices and keep records within certain counties or municipalities, requiring said utilities and their officers, agents and employees to obey the orders of the Commission and providing penalties for violation of same and for the enforcement thereof; requiring reports of annual income and levying a gross receipts tax on the incomes of said utilities, and authorizing the Commission to employ an expert and other assistants, and directing the State Treasurer to make disburse. ments for the payment of salaries and expenses approved by the Commission; fixing fees, salaries and expenses approved by the Commission; fixing fees of sheriffs and constables and witnesses and authorizing process to secure attendance of witnesses and requiring testimony and evidence to be produced providing penalty for unlawful disclosures of information received by the Commission's employes, declaring the sections and clauses separable and the invalidity of one shall not invalidate the remaining; repealing Acts inconsistent herewith, and declaring an emergency."

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The terms "Gas Utility" and "Public Utility," or "Utility," as used in this Act means and includes persons, corporations and companies, their lessees, trustees, and receivers appointed by any court whatsoever, now or hereafter, owning, managing, operating leasing or controlling within this State any wells, pipe lines, plant, property, equipment facility, franchise, license or permit for either one or more of the following kinds of business:

1. (a) Producing or obtaining, transporting, conveying, distributing or delivering natural gas, for public use or service for compensation.

(b) Or for sale to municipalities of persons or companies, in those cases referred to in paragraph 3 hereof, engaged in selling or distributing natural gas to the public.

(c) Or for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of the State.

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(d) Or for sale or delivery of natural gas to the public for domestic or other use.

2. Owning, or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired, by the exercise of the right of eminent domain; or if said line, or any part thereof, is laid upon, over or under any public road or highwty of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by any law to exercise the right of eminent domain.

3. The business of producing or purchasing natural gas and transportating or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received or distributed or sold to the public by another public utility, or by said municipality, in all cases where such business is in fact the only or practically exclusive agency, is hereby declared to be gas to such utility or municipality, is hereby declared to be a virtual monopoly and a business and calling affected with a public interest, and the said business and all property employed therein within this State are hereby subject to the provisions of this Act and to the jurisdiction and regulation of the Commission as a gas utility.

Every gas utility as defined in this Act is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided in this Act, provided that the rates and service of any gas utility plant, property, equipment or facilities owned or operated by a municipality shall not be subject to the jurisdiction or control of the Commission.

SECTION 2. It is declared that the operation of gas pipe lines to which this Act applies for buying, selling, transporting, producing or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly,

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in the mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of the time this law takes effect the business of purchasing or selling gas or of distributing such gas, or of transporting such gas or of producing or dealing in such gas pipe line so used in connection with such business be subject to the jurisdiction herein conferred to upon the Railroad Commission of Texas, hereinafter also referred to as the Commission. It shall be the duty of the Attorney General of Texas to enforce this provision by injunction or other remedy.

SECTION 3. The Railroad Commission, after due notice and upon full and fair hearing, shall have the power and it shall be its duty to fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this State; to establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public as the Commission may from time to time deem proper; to establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and to prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting and distributing facilities, and to regulate and apportion the supply of gas between towns, cities and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall have the power and it shall be its duty to prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall be the Commission's duty to exercise such power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county,

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or commissioners precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any county or district attorney in any county wherein such business or any part thereof may be carried on. All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines estab lishing or prescribing prices, rates, rules and regulations and conditions of service, shall be subject to review, revision and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership or joint stock association owning or controlling or operating the gas pipe line affected. In the event any rate or charges for gas or for service, or for meter rental, or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm or corporation owning or operating any gas pipe line, or in the event of an inadequate service in any respect, and complaint against same shall be filed by any person authorized by this act to file such petition, and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the Railroad Commission from and after the date of the filing of such complaint.

SECTION 4. The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines, reports duly verified under oath, of the total quantities of gas distributed by such pipe lines and of that held by them in storage, as also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent. The Commission shall have the authority and power to hear and determine complaints from interested persons, firms or corporations; to require complainants to file cost bond, to require attendance of witnesses at any hearing provided for in this Act, requiring their fees to be paid by the losing party to said

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proceeding, and to institute suit and issue such writs and process as may be necessary for the enforcement of its orders.

SECTION 5. No such pipe line public utility shall directly or indirectly charge, demand, collect or receive from anyone a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Commission to prescribe different rates and regulations for the use of gas for manufacturing and similar purposes and provided this shall not limit the right of the Commission to prescribe rates and regulations for service from or to other or different places, as it may determine; nor shall any such utility discriminate in favor of or against any person, place or corporation, either in apportioning the supply of gas or in its charges therefor.

SECTION 6. Nothing in this Act shall restrict the rights of cities, towns and municipalities to control the use of their public streets and alleys; and nothing in this Act shall be construed as taking away from the cities, towns or municipalities of this State any of their existing powers to regulate the rates, service, rules, regulations and practices of public utilities operating in such cities, towns or municipalities. When a city government has ordered any existing rate reduced the gas utility affected by such order may appeal to the Commission by filing with the Commission, on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, restriction, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved in the determination, decision, ordinance or order of the city, town or municipality as the Commission may deem just and reasonable. Whenever a public utility so appeals from the decision, restriction, ordinance or order of the city, or town or municipality, to the Commission, the Commission shall hear such appeal de novo and shall treat the appeal or complaint as though it were an original complaint. Whenever any local distributing company or con-

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cern whose rates have been fixed or may hereafter be fixed by any municipal government desires a change of any of its rates, rentals or charges, it shall make application to the municipal government or the city, town or municipality in which such utility is located and such municipal government shall determine said application, within sixty days after said application is presented to it, unless the determination thereof may be longer deferred by agreement between the municipality and the gas utility affected. If the municipal government should reject such application or fail or refuse to act on it within sixty days, then the utility may appeal to the Commission as herein provided but said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission.

SECTION 7. The pipe line expert provided for in Section 11 of the Act of February 20, 1917, being an Act for the regulation of oil pipe lines, shall likewise assist the Commission in the performance of its duties under this Act, under the direction of the Commission, under such rules and regulations as it may prescribe.

SECTION 8. The Commission shall have power to employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks and other persons as it shall deem necessary, to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other service or services as may be directed by the Commission or under its authority. Such persons and employes of the Commission shall be paid for the services rendered such sums at such time and under such conditions as may be fixed and prescribed by the Commission, and such salaries, wages and fees shall be paid out of the moneys as funds as in this Act directed. Provided, however, that the num-

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ber of employes and appointees employed or appointed under this Act, and the sum or sums of money paid to them for their services, shall be subject to the approval of the Board of Control, and no employment or appointment hereinunder shall be valid without such approval.

SECTION 9. Each witness who shall appear before the Commission or a Commissioner at a place outside the county of his residence shall receive for his attendance three ($3) dollars per day and three cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said Commission or Commissioner, which shall be ordered paid, upon the presentation of proper vouchers, sworn to be such witnesses and approved by the Commission or the chairman thereof out of the moneys and funds arising under this Act; provided that no witness shall be entitled to any witness fee or mileage who is directly or indirectly interested in any public utility involved in or concerning which, in any way, the investigation or hearing on account of which he is summoned shall relate, or who in anywise interested in any stock, bond, mortgages, security or earnings of any such utility, or who shall be the agent, attorney or employe of such utility, or any officer thereof, when summoned at the instance of such utility; and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation.

SECTION 10. In case any witness shall fail or refuse to obey a subpoena by the Commission, or a Commissioner, the Commission or Commissioner may issue an attachment for such witness directed to any sheriff or any constable of the State of Texas, and compel him to attend before the Commission or any Commissioner thereof, and give his testimony upon such matters as may be lawfully required of him, and to bring with him and produce on examination such records, books, vouchers, memoranda, true copies thereof, prints and such other matter as may be required, if any, in such subpoena. Should a witness fail or refuse to attend on being summoned, or to answer any question propounded to him, or to produce any record or data required to be produced by such subpoena, the claim

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that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying or producing such records and data, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. The sheriff or constable executing any process issued by the Commissioner thereof, under the provisions of this Act shall receive such compensation as may be allowed by the Commission not to exceed the fees prescribed by law by a similar service. For the purpose of enforcing this Act, and generally, the power and authority is hereby conferred upon the Commission to punish for contempt as courts of record under existing law.

SECTION 11. Except as in this section provided, every gas utility subject to the provisions of this Act, on or before the first day of January, 1921, and quarterly thereafter, shall file with the Commission a statement, duly cerified as true and correct by the president, treasurer or general manager, if a company or corporation, or by the owner or one of them, of an individual or copartnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin, Texas, a sum equal to one-fourth of one per cent of the gross income received from all business done by it within this State during said quarter, to be designated as the "Gas Utilities Fund." The gross receipts tax charge herein required to be paid, when paid, shall be allowed as an operating expense.

SECTION 12. The salary and expense of the "Expert" and of his assistantets, if any, and the salaries, wages, fees, and expenses of every other person employed or appointed by the Commission under the provisions of this Act, and all other expenses, costs and charges, including witness fees and mileage fees and mileage, incurred by or under authority of the Commission or a Commissioner, in administering and enforcing the provisions of this Act, or in exercising any power and authority hereunder, shall be paid from and out of the gas utilities fund by the

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State Treasurer on warrant of the Comptroller of Public Accounts, or order or voucher approved by the Commission or the chairman thereof. If the amount or total of such gross receipt charges collected shall not be sufficient, during any quarterly period, to pay such salaries, costs, charges, fees and expenses, then the deficit shall be paid by the State Treasurer out of the general revenue not otherwise appropriated. Until sufficient funds have accrued to said gas utilities fund from payment of said gross receipts tax, said expenses shall be paid by the State Treasurer out of the general revenue not otherwise appropriated. Any surplus remaining in the gas utilities fund, after paying all such salaries, costs, fees and charges after deducting such amounts as may be contracted to be paid and incurred and such as may be reasonably estimated by the Commission for its use, shall be paid over to the general revenue fund at the end of such quarterly period. Provided the expenses authorized in this section shall never exceed in any one calendar year the sum of $20,000.

The Commission shall on December 1, 1920, and annually thereafter, make a sufficiently full and comprehensive report to the Governor, which shall be by him transmitted to the next succeeding session of the Legislature of the State, showing in due and sufficient detail:

1. The proceedings of said Commission to such time with respect to the gas utilities defined herein.

2. The receipts in the "gas utilities fund" from all sources, and indicating the different sources.

3. The expenditures made under and in accordance with this Act, the nature of such expenditures, and which shall also include in addition to other items or expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this Act, with statement of traveling and other expenses incurred by each of said persons and approved by the Commission.

SECTION 13. Every gas utility as defined in the Act shall have an office in one of the counties of this State in which

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its property or some part thereof is located and shall keep in the said office all books, accounts, papers, records, vouchers and receipts as shall be required by the Commission. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as may be prescribed by the Commission.

SECTION 14. If any gas utility or other party at interest be dissatisfied with the decisions of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or other order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause; and said appeal shall be at once returnable to said appellate court, at either of its terms, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

SECTION 15. Any public utility as herein defined who shall violate any provision of this Act or who shall fail to perform any duty herein imposed, or who shall fail to comply with any valid order of the Commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense, such penalty to be recoverable at suit of the Attorney General of the State of Texas in the name of the State and for its use,

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each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. Such penalty together with reasonable attorney's fees may also be recoverable by and for the use of any person, corporation or association of persons against whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue. For the willful violation of the provisions hereof on the part of persons, firms and corporations owning, operating or controlling gas pipe lines it is hereby provided that the owners, officers, agents and employes of such gas pipe lines who may be guilty thereof shall de deemed guilty of a misdemeanor and each violation of such provisions shall be deemed a separate offense and upon conviction thereof the party violating same shall be fined in a sum not less than fifty dollars nor more than one thousand dollars and may be further punished by confinement in the county jail for not less than ten days, nor more than six months.

SECTION 16. Whenever any person, firm or corporation owning, operating or controlling such gas pipe line coming under the provisions of this Act shall violate any of the provisions of this Act or any of the rules or regulations of the Commission, the Commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction and venue thereof for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of such gas pipe line under the direction of the court as is now provided by law in receivership matters. The grounds for appointment of receiver provided for in this section shall be in addition to other grounds now provided under the existing law.

SECTION 17. This Act shall be cumulative of all laws of this State, which are not in direct conflict herewith, regarding the control of gas and pipe line companies or similar corporations in this State.

SECTION 18. If any provisions of this Act shall be held unconstitutional or for any other reason shall be held to

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be void, such holding shall not have the effect to nullify the remaining parts of this Act, but the parts not so held to be void shall nevertheless remain in full force and effect.

SECTION 19. Whereas there is no law in this State regulating corporations, persons or associations of persons engaged in the business of transporting, distributing and selling gas by pipe line, and no law bringing corporations, persons and associations of persons so engaged in such business within the definition of public utilities, and no tribunal having jurisdiction thereof, therefore, it is hereby declared that an emergency exists creating an imperative public necessity for the suspension of the constitutional rule requiring bills to be read on three several days and the same is hereby suspended, and this law shall take effect and be in from and after its passage, and it is so enacted.

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Forms

PRODUCER'S 88 SPECIAL—TEXAS FORM

Agreement, made and entered into the.....day of.....19...., by and between.....of....., hereinafter called lessor (whether one or more), and.....hereinafter called lessee:

Witnesseth: That the said lessor, for and in consideration of.....Dollars, cash in hand and paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, ha..... granted, demised, leased and let, and by these presents do.....grant, lease and let unto the said lessee for the sole and only purpose of mining and operating for oil and gas and of laying pipe lines and of building tanks, power stations and structures thereon to produce, save and take care of said products, all that certain tract of land situated in the county of....., State of Texas, described as follows, to-wit:

and containing.....acres, more or less.

It is agreed that this lease shall remain in force for a term of.....years from this date, and as long thereafter as oil or gas, or either of them is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and agrees:

1st. To deliver to the credit of lessor, free of cost, in the pipe line to which.....may connect.....wells, the equal one-eighth part of all oil produced and saved from the leased premises.

2nd. To pay the lessor.....Dollars, each year in advance for the gas from each well where gas only is found, while the same is being used off the premises, and lessor to have gas free of cost from any such well for all stoves and all inside lights in the principal dwelling house on said land during the time by making.....own connections with the well at.....own risk and expense.

3rd. To pay lessor for gas produced from any oil well and used off the premises at the rate of.....Dollars per year, for the time during which such gas shall be used, said payments to be made each three months in advance.

If no well be commenced on said land on or before the .....day of.....19..... this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor, or to the lessor's credit in the .....Bank at....., or its successors, which shall continue as the depository, regardless of changes in the ownership of said land, the sum of.....Dollars, which shall operate as rental and cover the privilege of deferfrom said date. In like manner and upon like payments of tenders the commencement of a well may be further deferred for like periods of the same number of months successively.

ring the commencement of a well for.....months

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And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privilege granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred.

Should the first well drilled on the above described land be a dry hole, then and in that event, if a second well is not commenced on said land within twelve months thereafter, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payments of rentals in the same amount and in the same manner as hereinbefore provided. And it is agreed that upon the resumption of the payments of rentals, as above provided, that the last preceding paragraph hereof, governing the payment of rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said lessor only in proportion which..... interest bears to the whole and undivided fee.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for all operations thereon, except water from wells of lessor.

When requested by lessor lessee shall bury.....pipe line below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises without the written consent of the lessor.

Lessee shall pay for damages caused by all operations to growing crops on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned—and the privilege of assigning in whole or in part is expressly allowed—the covenants hereof shall extend to their heirs, executors, administrators, successors, or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment, or a copy thereof; and it is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due payment of said rental.

Lessor hereby warrants and agrees to defend the title to the lands herein described and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgages, taxes, or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

In testimony whereof we sign, this the.....day of.....19.....

....

....

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State of Texas,
County of.....

Before me,.....a Notary Public in for the County of.....and State of Texas, on this day personally appeared.....known to me to be the person..... whose name.....subscribed to the foregoing instrument, and acknowledged to me that .....he..... executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the..... day of....., A. D. 19.....

.....
Notary Public in and for.....County, Texas

State of Texas,
County of.....

Before me,.....a Notary Public in for the County of.....and State of Texas, on this day personally appeared.....known to me to be the person whose name is subscribed to the foregoing instrument as..... of.....acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said.....

Given under my hand and seal of office on this the..... day of....., A. D. 19.....

.....
Notary Public in and for.....County, Texas

State of Texas,
County of.....

Before me,.....a Notary Public in for the County of.....and State of Texas, on this day personally appeared.....wife..... known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she the said.....acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office on this the..... day of....., A. D. 19.....

.....
Notary Public in and for.....County, Texas

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ASSIGNMENT OF OIL AND GAS LEASE—85

Whereas, On the.....day of.....19....., a certain oil and gas mining lease was made and entered into by and between.....,Lessor...., and ..... Lessee....., covering the following described land in the county of.....and State of Texas, to-wit:

Said lease being recorded in the office of the County Clerk in and for said county in book.....page.....and

Whereas, The said lease and all rights thereunder or incident thereto, are now owned by.....

Now, Therefore, For and in consideration of One Dollar (and other good and valuable considerations), the receipt of which is hereby acknowledged, the undersigned, the present owner..... of the said lease and all rights thereunder or incident thereto, do.....hereby bargain, sell, transfer, assign and convey all rights, title and interest of the original lessee and present owner.....in and to said lease and rights thereunder in so far as it covers the.....

together with all personal property used or obtained in connection therewith to.....and.....heirs, successors and assigns.

And for the same consideration, the undersigned for..... and.....heirs, successors and representatives, do..... covenant with the said assignee.....heirs, successors, or assigns that.....the lawful owner..... of the said lease and rights and interests thereunder and of the personal property thereon or used in connection therewith; that the undersigned.....good right and authority to sell and convey the same, and that said rights, interest and property are free and clear from all liens and incumbrances, and that all rentals and royalties due and payable thereunder have been duly paid; and that the undersigned will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, The undersigned owner.....and assignor.....ha..... signed and sealed this instrument this..... day of.....19.....

.....(Seal)

.....(Seal)

.....(Seal)

(For Acknowledgments, see under Lease Form.)

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ROYALTY CONTRACT.

The State of Texas,
County of.....
Know All Men By These Presents:

That.....of the County of....., State of Texas, ha..... and by these presents do..... grant, bargain, sell, convey, set over and assign and deliver unto.....the following to-wit:

.....interest in and to all of the oil, gas and other minerals in and under and that may be produced from the following described lands situated in.....County, Texas, to-wit:

together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said lands for oil, gas and other minerals, and removing the same therefrom.

And said above described lands being now under an oil and gas lease originally executed in favor of.....and now held by....., it is understood and agreed that this sale is made subject to said lease, but covers and includes.....of all the oil royalty and gas rental or royalty due and to be paid under the terms of said lease.

It is agreed and understood that.....of the money rentals which may be paid to extend the term within which a well may be begun under the terms of said lease is to be paid to the said....., and in the event that the said above described lease for any reason becomes cancelled or forfeited, then and in that event, the lease interests and all future rentals on said land, for oil, gas and mineral privileges shall be owned jointly by.....and .....each owning.....interest in all oil, gas and other minerals in and upon said land, together with.....interest in all future rents.

This sale is made for and in consideration of the sum of .....Dollars, cash in hand paid, the receipt of which is hereby acknowledged.

To Have and to Hold, the above described property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said..... heirs and assigns forever, and.....do hereby bind ourselves, heirs, executors and administrators to warrant and forever defend all and singular the said property unto the said .....heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness.....hand.....this, the .....day of..... A. D. 19.....
Witnesses:

....
....

(For Acknowledgments, see under Lease Form.)

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MINERAL DEED.

State of Texas,
County of.....
Know All Men By These Presents:

That.....of .....County, Texas, for and in consideration of the sum of.....Dollars ($.....) cash in hand paid by.....hereinafter called Grantee....., the receipt of which is hereby acknowledged, have granted, sold, conveyed, assigned and delivered and by these presents do grant, sell, convey, assign and deliver unto the said Grantee..... an undivided.....interest in and to all of the oil, gas and other minerals in and under, and that may be produced from the following described land situated in.....County, Texas, to-wit:

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of....., it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes.....of all of the oil royalty and gas rental or royalty due and to be paid under the terms of said lease.

It is understood and agreed that.....of the money rentals which may be paid to extend the term within which a well may be begun under the terms of said lease is to be paid to the said Grantee.....and in event that the above described lease for any reason becomes cancelled or forfeited, then and in that event an undivided.....of the lease interests and all future rentals on said land for oil, gas and other mineral privileges shall be owned by said Grantee, ...owning.....of all oil, gas and other minerals in and under said lands, together with..... interests in all future rents.

To have and to hold the above described property together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee.....herein,.....heirs and assigns forever and .....do hereby bind..... heirs, executors and administrators to warrant and forever defend all and singular the said property unto the said Grantee.....herein,.....heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness.....hand.....this the..... day of.....19.....

Witnesses:

....

....

(For Acknowledgments, see under Lease Form.)

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RELEASE OF OIL LEASE.

Know all Men by These Presents:

The State of Texas,

County of.....

That.....

does hereby release, relinquish and surrender to.....

....., ...heirs or assigns, all right, title and interest in and to a certain oil and gas mining lease made and entered into by and between.....

....., of.....

as lessor....., and....., as lessee dated the.....day of....., 19....., covering the following described land in the county of.....and State of Texas, towit:.....

said lease being recorded in the office of the County Clerk in and for said County, in Book.....at page.....

In Witness Whereof, The undersigned owner.....and releasor.....ha.....signed and sealed this instrument this .....day of .....19.....

.....(Seal)

.....(Seal)

.....(Seal)

(For Acknowledgements, see under Lease Form.)

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